

MINUTES
ORANGE COUNTY BOARD OF ADJUSTMENT
MARCH 14, 2011

MEMBERS PRESENT: Thomas Brown, Chair
David Blankfard, Alternate
Mark Micol, Alternate
Dr. James Carter, Full Member
Dr. Larry Wright, Full Member, Planning Board Liaison
Dr. Dawn Brezina, Full Member

STAFF PRESENT: Michael Harvey, Zoning Enforcement Officer
Tina Love, Administrative Assistant

OTHERS PRESENT: Sahana Ayer, Staff Attorney

1. CALL TO ORDER

Tom Brown: The meeting is now called to order. The board is a quasi-judicial administrative body governed by North Carolina Statutes and the Zoning Ordinance of Orange County. Everyone who plans to speak tonight will be called forward to be sworn in which is required for everyone speaking before the board.

2. CONSIDERATION OF ADDITIONS TO AGENDA

Tom Brown: Does anyone have any additions to the agenda? Hearing none, we will proceed.

3. APPROVAL OF MINUTES

a. November 8, 2010

Tom Brown: On page 3, line 28 should read, "to reaffirm what is going to be occurring on the property." On page 4, line 9 should read, "My name is Greg Andrews and I live in Efland and run a construction company in Efland." On page 6, line 32 should read, "My grandparents lived just around the curve and that is where we played ball for years." Page 10, line 14 should read, "...through the arduous advertisement...".

David Blankfard: On page 21, line 11 should read, "would be of...". Page 23, line 17 and line 22 should be attributed to David Blankfard. Page 40, line should read, "Motion made by David Blankfard..".

[These corrections have been made.]

MOTION: Larry Wright made a motion to approve the minutes with the noted corrections. Seconded by Dawn Brezina.

VOTE: Unanimous

4. PUBLIC CHARGE

The Board of Adjustment pledges to the citizens of Orange County its respect. The Board asks its citizens to conduct themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At any time should any member of the Board or any citizen fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

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The following individuals were sworn in:

Gene Poveromo	Thomas C. West
Chad E. Abbott	Delois C. West
Noral D. Stewart	Vic Knight
Nick Herman	Frank S. Williams
Judy Van Wyk	

5. **A-6-10 – Class II Kennel - Canine Boarding Facility**

Michael Harvey: I am going to go over the abstract. I reserve the right at the close of the hearing to review staff's recommendation as articulated in Attachment 4 of your abstract, Findings of Fact sheet, and staff's various responses to the questions we are required to answer for the board's satisfaction. Then the board will need to make findings on the three general requirements as contained within Section 8.2.4, subsection B1, 2 and 3 concerning the proposed land uses compliance with the Comprehensive Plan, if the land use will maintain or enhance adjacent property values as is consistent with local zoning regulations. You have a revised site plan to include a new note indicating that an existing gravel access road from Old Greensboro will be increased to 20 feet in width as required by the Fire Marshal. You may recall from the original packet in December there was a concern from the Fire Marshal that access to the facility would not be practical and the 12-foot wide travelway and its original recommendation was to deny the applicant. The applicant has revised the site plan to address the Fire Marshal's concerns and you will note in Attachment 3, there is a revised memorandum from the Fire Marshal indicating he no longer has the concern. We are here tonight because Mr. and Mrs. West came to the county to propose a boarding operation of canines and as we talk within our abstract, specifically beginning on page 43, when you begin to look at how Orange County defines a Class II kennel, it is an establishment involving animals of any species, excluding domesticated livestock engaged in any of the following and that is the owner keeping it for any purpose 20 or more dogs with selling and/or training of guard dogs or security dogs and the keeping of more than five animals at any given time for the purpose of breeding, boarding or rehabilitation. As the West's intent to board animals and they will have more than five dogs, it was staff's determination they had to apply for a Class B Special Use Permit. I am not going to go through the various standards they have to adhere to but I will point out a couple of things in my abstract that I want the board to keep in mind. There are specific standards of evaluation that we, staff and ultimately the Board of Adjustment are required to go through and they are articulated in Section 8.8.11.2 and 8.8.11.3 of the ordinance and those are that the size is of adequate size to protect adjacent properties from adverse effects of the kennel or riding stable/academy. No part of any building, structure, runway or riding arena which animals are housed or exercised shall be closer than 150 feet from the property line. Any kennel which is not wholly enclosed within a building shall be enclosed by a security fence of at least six feet in height. The site plan shows parking, access areas and screening devices for buildings and animal boarding facilities. The Site Plan shall be reviewed by the Orange County Animal Control Department and found to be in conformance with their regulations. The building plans for all kennel facilities shall be reviewed and approved by the Director of Animal Control. That a sign be established and posted on the property providing the names, addresses, and telephone number where persons responsible for the facility may be contacted. When required by the Animal Control Ordinance they may be required to obtain the necessary application within 30 days of occupancy. We have provided general answers to these questions that I will go over but one concern I wanted to bring to the board's attention is that when we review the findings of fact and I know the applicant will address it as well, and it is already addressed on their site plan. On page 48, staff has a statement near the bottom of the page, "As previously indicated staff is unsure of how to address the Fire Marshal's concerns or even if they could even be addressed. Staff recommends that the applicant be allowed to address this concern during the hearing. This is referring to the access road getting to the site. You will note from the note on the Site Plan which the Fire Marshal has indicated he supports is the road accessing the site from Old Greensboro may have to be field

1 altered to accommodate trees, utilities poles, fence posts, etc. We recommending a condition that the Fire
2 Marshal provide to the county planning staff that he has field verified and approved the exact location of the
3 access road consistent with a note on the Site Plan and consistent with what we believe will be necessary for a
4 permit to be approved. The applicant has already indicated they are willing to do that, the Fire Marshall has
5 indicated they are willing to do that but staff cannot testify that this road will meet all the Fire Marshall's demands
6 because on the Site Plan within his own memorandum the Fire Marshall has already indicated the road can be
7 altered, field altered, so it does not impact existing structures or significant trees. Why number one this statement
8 is in here and number two when you read the findings of fact, staff has not made a recommendation on that
9 specific item. I think it is important that you also understand the various attachments. Attachment 1 of your
10 abstract is the application, Attachment 2 is the color map delineating the property, and Attachment 3 is the various
11 staff correspondence from the Sherriff's Department which has not changed since December. Fire Marshall,
12 which was provided recently in the month of March, and the memorandum from the Orange County Health
13 Department which indicates they cannot issue a septic tank permit. You will note from the Findings of Fact and
14 from the note and from the note on the Site Plans before you that the applicant is fully aware they have to go to
15 the state in order to obtain the necessary septic permit for this site to become operational. That is a condition of
16 approval that we are recommending. With that, I will let the applicant present their application.

17 Nick Herman: We would like to introduce staff's memorandum and its four attachments and also I will state for the
18 record that will include the site plan you have received and would include the elevations page. I will call Mr. Chad
19 Abbott.

20 Chad Abbott: My name is Chad Abbott with Summit and I have been sworn in.

21 Nick Herman: You have given your name, tell us your employment.

22 Chad Abbott: I am with Summit Consulting in Hillsborough, N.C. representing Mr. Thomas West as the Engineer
23 Architect for the job.

24 Nick Herman: Do you hold any North Carolina licenses?

25 Chad Abbott: Yes sir. Professional Engineer's license.

26 Nick Herman: So your firm help put together the application for Mr. and Mrs. West?

27 Chad Abbott: Yes sir.

28 Nick Herman: Did you prepare the site plan?

29 Chad Abbott: We did.

30 Nick Herman: Did you prepare elevations that have been provided to the board?

31 Chad Abbott: We did.

32 Nick Herman: Do we have a blow up of the site plan, is that what this is?

33 Chad Abbott: Yes sir, the same as what was given in the package.

34 Nick Herman: We are going to quickly go through this so the board can be oriented to this. Can you all see this?
35 Where is the main DOT road?

36

- 1 Chad Abbott: Old Greensboro is traveling left to right if you look at this sheet.
- 2 Nick Herman: How does one access this property?
- 3 Chad Abbott: The main access is further down where you have the existing private drive that serves multiple
4 residences and comes up into the property here. You will see a schematic of that on the right hand side on the
5 site plan.
- 6 Nick Herman: This is the tail end of the private drive that goes into the property of Mr. and Mrs. West?
- 7 Chad Abbott: Yes.
- 8 Nick Herman: The easement is how wide?
- 9 Chad Abbott: 50-foot access easement.
- 10 Nick Herman: The point is to have this access drive maintained as a 20-foot road going in?
- 11 Chad Abbott: Yes. For fire trucks.
- 12 Nick Herman: That is part of the Site Plan.
- 13 Chad Abbott: Yes.
- 14 Nick Herman: Take us into the site, how does the drive work into the site where this proposed facility is located?
- 15 Chad Abbott: As you come into the site, the drive will split and you will have a 20 foot access that will continue to
16 the site for two way traffic going in and out of the facility. The drive will also split and go to this personal parking
17 area to his house which is approximately six or seven parking spaces with various structures. As you come down
18 into the site, it tapers to a one way drive and comes through where there are five parking spaces divided or just a
19 drop off area and it will loop back around and continue back out the site down the 20 foot drive.
- 20 Nick Herman: This is what?
- 21 Chad Abbott: Mr. West's house.
- 22 Nick Herman: What are these structures in this area here?
- 23 Chad Abbott: This is a barn with a lean to and parking structure, roughly there are four parking spaces across this
24 section. Here, you have two of the metal carport garages and places for additional parking for his house only.
- 25 Nick Herman: Okay. The new facility is down here?
- 26 Chad Abbott: Yes sir.
- 27 Nick Herman: Adjacent to this circular drive?
- 28 Chad Abbott: That is correct.
- 29 Nick Herman: Starting at the top, where are the nearest residences to this property other than the West
30 residence?
- 31 Chad Abbott: About 580 feet north/northeast and then about 420 feet there is another residence over here.

- 1 Nick Herman: Is that the Moore residence?
- 2 Chad Abbott: Yes. Then coming back down towards Greensboro Road, there is another residence approximately
3 500 feet.
- 4 Nick Herman: You gave a dimension of 500 plus feet from this residence up here, was that from this facility?
- 5 Chad Abbott: Yes. From the closest corner to that residence so each of those distances are measured from that
6 corner closest to that residence.
- 7 Nick Herman: That is how much?
- 8 Chad Abbott: 580 feet.
- 9 Nick Herman: The Moore house over here, what is the distance from the facility to that house?
- 10 Chad Abbott: Approximately 420 feet.
- 11 Nick Herman: There is another one down here. What is the distance?
- 12 Chad Abbott: 505.
- 13 Nick Herman: While we are at the entranceway here, what is the circle designating?
- 14 Chad Abbott: Additional screenings that may be provided that says a drive entrance provide white pines for a
15 type B buffer. Upon the final location of the 20 foot access for the fire department, white pines will be planted in
16 the areas where the 20 foot drive has not been paved to provide additional screen for the gap in the buffer.
- 17 Nick Herman: This buffer is designed to shield any view from here to this turn around?
- 18 Chad Abbott: Yes sir. It is part of the required 30 foot buffer.
- 19 Nick Herman: Is this the proposed new facility here?
- 20 Chad Abbott: That is correct.
- 21 Nick Herman: What was the square footage of that?
- 22 Chad Abbott: 3,845 feet. That is the square footage of the dark outline structure. The outer line is the chain link
23 fence.
- 24 Nick Herman: It has been mentioned that this is called a kennel so it will have dogs, are you aware they will have
25 cats?
- 26 Chad Abbott: Dogs and cats. It is a boarding facility for pets.
- 27 Nick Herman: From the edge of the facility to the property line, what is the distance?
- 28 Chad Abbott: Approximately 150 feet.
- 29 Nick Herman: Is the edge of the facility to any property line at or in excess of 150 feet?
- 30 Chad Abbott: It is at least 100 feet from every property or more.

- 1 Nick Herman: While we are in this driveway, this is a continuation of the gravel drive?
- 2 Chad Abbott: That is correct.
- 3 Nick Herman: What are these circles? What do they denote?
- 4 Chad Abbott: Additional screening as required by the Orange County Ordinance for parking spaces for any time
5 they are adjacent to any other residences. That is why they surround the parking spaces to provide screening
6 from any parked cars of Mr. West's proposed business from any of the surrounding residences.
- 7 Nick Herman: This provides a screen basically with any kind of view coming here, here, and here in the facility?
- 8 Chad Abbott: Yes. For the parked cars. They are about four feet high of every screen that is required.
- 9 Nick Herman: Where are the parking spaces and how many?
- 10 Chad Abbott: You have five there, one being van accessible. There is an eight foot access aisle. Any time you
11 have a handicap space, at least one out of eight must be van accessible so since there is only one, it must be van
12 accessible so that is the eight foot access aisle. It will be a hard surface concrete because we must provide a
13 hard surface for all access routes and spaces or loading areas for handicap.
- 14 Nick Herman: So you have a handicap space among other spaces?
- 15 Chad Abbott: Yes sir.
- 16 Nick Herman: The hatched area is?
- 17 Chad Abbott: A concrete fire way which is deemed as the accessible route from that space to the building.
- 18 Nick Herman: Cars come in here and may park here and what is the drill, they come around and come out?
- 19 Chad Abbott: It is anticipated that most of the time someone will bear off to the right, park, unload their animal
20 and then continue out.
- 21 Nick Herman: What do these squiggly lines denote?
- 22 Chad Abbott: This is the approximate location of existing buffer or screening around his property. It has been
23 drawn in based on aerial photography from Orange County GIS. It is used to note the limits of the existing tree
24 line and to show we will not be disturbing any of the existing vegetation or cutting into the existing buffer around
25 the proposed facility.
- 26 Nick Herman: What is this area reserved for?
- 27 Chad Abbott: As Mr. Harvey indicated, the Health Department did not approve Mr. West's site for another septic
28 or perk area so we will be designing a drip field in the woods for him. It consists of a septic tank as any other
29 system would with a couple of other tanks that will eventually pump into little tubes with a diaphragm on it.
- 30 Nick Herman: Subject to the approval of the local and state authorities.
- 31 Chad Abbott: The state.
- 32 Nick Herman: As a condition of the Special Use Permit, that is what this area is reserved for. Is that right?

1 Chad Abbott: Yes sir.

2 Nick Herman: The total site is how many acres in area?

3 Chad Abbott: Approximately 10 acres.

4 Nick Herman: Do you see anything else this board needs to know about this map?

5 Chad Abbott: No sir. It is clear to me to have a chain link fence and parking that is required.

6 Nick Herman: We will go to that in just a second. This is the facility, this rectangular area, is that right?

7 Chad Abbott: Yes sir.

8 Nick Herman: Can you summarize what all this denotes?

9 Chad Abbott: I don't want to speak for Mr. West but per our conversations, the chain link fence you have open
10 areas up front and then one in the rear. These will be allowed to release dogs from each individual, up to 30 runs
11 at maybe three or four at a time so they can be allowed to exercise and play within a six foot fence.

12 Nick Herman: You understand the initial phasing is intended to be 16 runs for 16 animals that with a potential
13 buildout to a maximum of 30?

14 Chad Abbott: Yes sir.

15 Nick Herman: This fence that surrounds all this is a six foot high chain link fence, is that what that is referring to?

16 Chad Abbott: Provided with vinyl slats for screening.

17 Nick Herman: What does that mean?

18 Chad Abbott: The chain link fence will have vinyl slats vertically running through the links to provide additional
19 screening, noise barrier, etc.

20 Nick Herman: The animals can't look out and you can't see them looking in.

21 Chad Abbott: That is the intent.

22 Nick Herman: Did your firm also prepare elevations and will be responsible for the design of this facility?

23 Chad Abbott: Yes sir.

24 Nick Herman: Let's look quickly at that. There are more to these plans. This is one they have seen but there are
25 other views of it. Briefly explain to the members of the Board what this depicts.

26 Chad Abbott: You have your front entrance coming from the handicap parking space here. That is where Mr.
27 West will have his counter; I guess where he greets guests. As you can see these wings to the side are further
28 back. Looking from this view, these wings will branch out approximately at this location so they can come out of
29 the page. As you can see, the building materials are listed. There will be CMU walls between each kennel so the
30 dogs cannot see each other.

31 Nick Herman: Dogs or cats.

32

1 Chad Abbott: The animals cannot see each other or come in contact with each other. There will be CMU walls
2 between each run and will be provided with a chain link gate on the front of the outside door. The floor plan
3 provides for this same run to go into the building where there will be a door that is mainly shut at times when it is
4 not in operation. There will be a metal sided roof, CMU walls that will be painted to Mr. West's appeal.

5 Nick Herman: You submitted this as well as other views of elevation to Mr. Noral Stewart.

6 Chad Abbott: Yes sir.

7 Nick Herman: Mr. Chairman, I think that is all the questions I have.

8 Larry Wright: Can you reconcile the Health Department's action on the septic system with your solution?

9 Chad Abbott: I don't understand your question.

10 Larry Wright: Can you explain the ruling of the Health Department first?

11 Chad Abbott: The ruling of the Health Department was there was not sufficient soil for the site to allow Mr. West
12 to use a conventional septic system being it just a septic tank and drain field so when a property is deemed not
13 having the capacity to do such, the state allows several different options. If it is less than an acre, they allow
14 service discharge which is that you can dump it into a creek or ditch after it has been treated and disinfected.
15 With properties more than three acres, they require you to use a drip system or spray field. Drip systems are less
16 intrusive to your neighbors and you don't have worry about any mist going anywhere but either way, the dog's
17 waste will be treated in a septic tank like you have at your house and solids will be held in there and liquids will go
18 to a pump tank which is filtered through a sand filter several times and then it goes through a UV light and into the
19 ground and you are required to have a five day holding tank for any wet weather season where the ground stays
20 too wet and you cannot operate it. You are required to have an operator's license and to take samples twice a
21 year and have a licensed operator which most times is the installer. Most of the time they are licensed to operate
22 these systems and provide reports to the state each year.

23 Larry Wright: So it is reported to the state?

24 Chad Abbott: Yes sir. The state will issue the permit and we will have to go to the state. It will be a three to six
25 month process, they will review and comment as needed and then hopefully issue a permit for the state general
26 discharge permit.

27 Nick Herman: I guess the bottom line is that a conventional system for various technical reasons won't work and
28 that is what the state is saying in its report. So what will happen is there will be an alternative system like a drip
29 system but as a condition of the Special Use Permit, we are going to propose, I think staff has proposed, and the
30 applicant agrees to this that the Special Use Permit contain a condition that you get approval from the state for
31 this alternative system.

32 Michael Harvey: Dr. Wright, the only thing I would add to Mr. Abbott's explanation is that does the state have to
33 inspect a system on an annual basis but they also provide Orange County with the documentation proving it is in
34 working order and if it is not then obviously from a practical standpoint Orange County Planning will revoke the
35 permit.

36 Chad Abbott: Once it is installed, I will or whoever Mr. West deems appropriate will inspect the system. Most
37 times it is the person who designs it and I will have to certify it with my license and send my certification to the
38 state and they will in turn send a letter to Orange County saying we have approved and issued a permit for Mr.
39 Thomas West.

- 1 Larry Wright: The next question is relative to the barriers. Up here on the entry road, we talked about white pine,
2 is that true?
- 3 Chad Abbott: Yes.
- 4 Larry Wright: Okay. I planted about 500 white pines and they seem to die off at the bottom and grow at the top,
5 so how much of a barrier would that be?
- 6 Chad Abbott: It was a screening in the Orange County Ordinance, it was allowed in the buffer.
- 7 Nick Herman: What other options are there?
- 8 Chad Abbott: I don't know that Mr. West would be against planting another variety that would be more sufficient.
- 9 Larry Wright: You may want to consult the county on that. I have another one and that is on the stream buffer
10 down here by the circular drive. You have here provided a three foot high hedge which is really too high and Wax
11 Myrtles, Chinese Hollies. Are you familiar with Chinese Hollies?
- 12 Chad Abbott: Yes I am.
- 13 Larry Wright: Is it an invasive species?
- 14 Chad Abbott: A lot of forest
- 15 Larry Wright: It is a highly invasive species? I think it is. In fact, the University of Georgia School of Agriculture is
16 doing a big study that is funded by the Department of Agriculture on how to control it so my advice is to try to think
17 of a substitute for the Chinese Holly.
- 18 Nick Herman: If you could address that. We don't have a problem with working out.....
- 19 Michael Harvey: What I will state is that hearing one board member's concern and I think some consensus that
20 there is a suggestion that the landscape plan be revised to include local, indigenous, non-invasive species that
21 provide a better buffer at certain key points and you would work with staff consistent with the revised Landscape
22 Ordinance to facilitate and install the appropriate buffer.
- 23 Nick Herman: Add that as a condition?
- 24 David Blankfard: When you put in your drip line, is it going in when you install that or tear up the vegetation?
- 25 Chad Abbott: No. Actually I just certified one on Friday and they clean out any of the dead underbrush, logs, etc.,
26 but all the woods are still standing and they run it on top of the ground and cover it with leaves and you don't have
27 to clear anything.
- 28 David Blankfard: As a note, I was counting the number of stalls you have on the site plan, you are short by one
29 bay. Looks like there are only 28 runs as opposed to 15 per side.
- 30 Nick Herman: Just so you are not mislead, I think the maximum build out would be 30. The intended initial build
31 out is 16 but I don't want to misrepresent it. I am told by the applicant the maximum would be 30.
- 32 Dawn Brezina: Is this the appropriate time to talk about the building?
- 33 Nick Herman: Sure.

- 1 Dawn Brezina: Are there any special building requirements?
- 2 Nick Herman: We have an expert that will address that, the acoustical characteristics of the building.
- 3 Larry Wright: What is CMU?
- 4 Chad Abbott: Concrete Masonry Unit. It is cinderblock.
- 5 Tom Brown: Anything further?
- 6 Nick Herman: I would like to call Noral Stewart.
- 7 Noral Stewart: My name is Noral Stewart, 7330 Chapel Hill Road, Raleigh. Yes, I was sworn in.
- 8 Nick Herman: Mr. Stewart, where do you live?
- 9 Noral Stewart: I live at 5106 Cape Benson Way in Raleigh, NC.
- 10 Nick Herman: How are you employed?
- 11 Noral Stewart: I am President and Principal Consultant of Stewart Acoustical Consultants. Professional
12 consulting firm in Raleigh for over 30 years.
- 13 Nick Herman: What is the purpose of your consultation?
- 14 Noral Stewart: We provide consultation on acoustics and noise control for buildings and environmental
15 community noise issues and industrial work place noise control.
- 16 Nick Herman: Tell us briefly what your qualifications are and your advanced degrees.
- 17 Noral Stewart: I have my BS, Master's and PhD from the Department of Mechanical Engineering, North Carolina
18 State University, specialized in acoustics and noise control. In my 30 plus years, I have also been president of the
19 National Counsel of Acoustical Consultants, an international association. I am a Fellow of the Acoustical Society
20 of America, ASBM International, the standards writing, and a member of the Institute of Noise Control
21 Engineering.
- 22 Nick Herman: How does one refer to your area of expertise? What is that called?
- 23 Noral Stewart: Acoustical Consultant.
- 24 Nick Herman: Have you testified as a noise consultant in the past?
- 25 Noral Stewart: Yes. Before many boards such as this and in the U.S. Federal Court and State courts in North and
26 South Carolina.
- 27 Nick Herman: Have you had the occasion in the past to testify to this board in connection with a kennel?
- 28 Noral Stewart: Yes I have.
- 29 Nick Herman: What was that case, the Gene Lonsway case?
- 30 Noral Stewart: Yes. Approximately a year ago.
- 31 Nick Herman: What were you asked to do by the applicant in this case?

1 Noral Stewart: To examine the site plans and building plans and evaluate whether it would be in compliance with
2 the local ordinance requirements and evaluate the noise implications for the site.

3 Nick Herman: Have you also, in that connection, analyzed the actual plans for the construction of the facility?

4 Noral Stewart: Yes. A part of what we had to do was to look at the construction plans for the building with regard
5 to the fact that the dogs would be indoors much of the time, closed up at night, they would be out in the runs to the
6 side during the day time.

7 Nick Herman: Those were plans submitted to you by Mr. Abbott's firm?

8 Noral Stewart: I originally got them from Mr. West.

9 Nick Herman: You have met with Mr. Abbott about this?

10 Noral Stewart: Yes.

11 Nick Herman: Is it fair to say that you have analyzed this project from an acoustical standpoint?

12 Noral Stewart: Yes.

13 Nick Herman: What conclusions have you reached?

14 Noral Stewart: I have concluded that the building is well designed considering the site and the location and
15 distances from the boundary. Concrete masonry walls with no windows. The kennel area has small doors that
16 are well designed to allow the dogs in and out. The ceiling and metal roof were fibrous material with thermal
17 insulation between the ceiling and the roof. A sealed air conditioning system that does not have major dents in
18 the wall or air where sound could come out and so forth. The outdoor runs on each side for each one of the
19 kennel positions inside, there is a similar outside area. Those outside areas are not a big long area on the side of
20 the building but individual areas for each dog with concrete block between each one and a roof over them and the
21 opening doors to the outside where you can get into that area from the outside of the chain link fence with the
22 slats in it so the dogs when they are outside see very little which is one of the things that cause a dog to bark
23 when they see things. The outside area, while it is outside, it is somewhat enclosed, it is not fully opened. I
24 analyzed the situation with regard to both the time when the dogs were indoors with the guillotine doors to the
25 outside closed and the outside condition when they are outside and we contacted the manufacture of those doors
26 to make sure we understood them and they should work very well. The Orange County Ordinance limits at the
27 property line are 60 db in the daytime and 50 db at night. With the dogs inside and closed up at night, the level at
28 the boundary would be less than 40 db which is a 10 db margin over the ordinance requirement...a very strong
29 margin. People typically consider a difference of six to ten db half as loud so it is no more than half as loud as
30 what the ordinance requires in terms of perception. That is assuming that the dogs are actively barking. Most of
31 the time they will not be barking and it won't get to that level. That is a very quiet level. First of all that is at the
32 boundary, the nearest houses are more like 400 or 600 feet away and the boundary is more like 200 feet so at
33 those houses, we are talking another six to ten db lower than what it is at the boundary so you are getting to
34 around 30 when the dogs are inside. The outside condition during the day, the dogs will be outside, as we
35 discussed, the facility is designed to minimize what they see. They are set up so half the dogs are on one side
36 and half on the other so that the building blocks the sound in one direction. The way the facility is designed tends
37 to steer the sound in certain directions more than other. The sound, even with the dogs outside during the day
38 should comply with the 60 db limit at the boundary and considering the distance of the houses, they will be close
39 to 50 db. If you have several dogs barking, one dog would be another four or five db below that and that is if you
40 have several dogs at once but very rarely bark in complete unison. There may be one bark at a time. You have
41 to be in complete unison, so I am comfortable they would be in compliance with the ordinance limits in the
42 daytime. We do recognize you will hear dogs barking.

1 Nick Herman: What is your opinion about the proposed construction of this facility in comparison to other kennels
2 you are familiar with from an acoustical standpoint?

3 Noral Stewart: Considering some I have seen, this one is much better, especially because we don't have leaks to
4 the outside or windows. It is well designed for sound blockage, I might advise Mr. West to do some things on the
5 inside to help himself but that doesn't affect things coming out since these other factors will make up for that. The
6 outside design with the runs outside are done much better than most I see to separate the dogs from one another
7 to limit the sounds.

8 Nick Herman: How does it compare, this board some time ago approved Gene Lonsway's kennel, to the design
9 of Lonsway's kennel?

10 Noral Stewart: Lonsway had some differences. He had a ventilation system which we had to worry about the
11 sound getting to the outside which is different. He had windows in his building so we had to worry about those.
12 His ceiling design was one that would not necessarily block as much sound as what we have here but it helped to
13 reduce the sound inside which helped make up for that. There were some differences in the design. He did not
14 have a bigger buffer to neighbors so we had to be careful there.

15 Nick Herman: All things considered, is this as good as or better than what was approved in Lonsway's?

16 Noral Stewart: I would say it is as good or better. We do have a difference that we have more outside spaces; he
17 did not have outside spaces other than to take the dogs out.

18 Nick Herman: Anything further?

19 Noral Stewart: If they got a letter we wrote in January, I want to note there was a slight change in location with
20 kennels because some of my distances are a little off from the final plans.

21 James Carter: What does the acronym db stand for?

22 Noral Stewart: db is a unit used to measure sound. It is named after Alexander Graham Bell. One tenth of a bell.
23 We typically, in measuring sound in the community for various other uses when we are talking about how people
24 perceive the sound, we modify the sound a little bit before we measure it to account for the way the ear hears.
25 The ear does not hear the low frequency base sound as well as middle range sounds which is where most of our
26 speech is. We use an electronic filter in the instrument to modify the sound before you measure it in decibels.
27 Though there are people who say it is not correct to say so, the common way for denoting is to put an a after the
28 db. A gentleman who died several years ago would correct anybody saying you should say the weighted sound
29 level in decibels, there is no such thing as a dba, but everybody does that as a shortcut.

30 Tom Brown: Any further questions?

31 Larry Wright: You stated that the building position design steers sound in one direction or another. Could you
32 please expound on that?

33 Noral Stewart: Specifically the outdoor runs, the way they are oriented on the side of the building. They will steer
34 a little more to the north and the south.

35 Larry Wright: And are there neighbors to the north and south?

36 Noral Stewart: There are some closer ones to the east. But that is not a major factor but a minor situation and my
37 conclusions were based on going in that direction at the time I analyzed it.

38 Nick Herman: We have talked about a house up here, right?

- 1 Noral Stewart: More over here is one.
- 2 Nick Herman: The closest one is right around here.
- 3 Noral Stewart: We have done the standard.
- 4 Nick Herman: This is due north. Mr. West.
- 5 Thomas West: My name is Thomas C. West.
- 6 Tom Brown: Have you been sworn in?
- 7 Thomas West: Yes sir.
- 8 Nick Herman: Mr. West, you and your wife are the applicants in this case. Are you now retired?
- 9 Thomas West: Since 2002.
- 10 Nick Herman: Where were you employed before you retired?
- 11 Thomas West: Durham Police Department.
- 12 Nick Herman: In what capacity.
- 13 Thomas West: I was in uniform patrol.
- 14 Nick Herman: Is your wife employed?
- 15 Thomas West: Yes sir.
- 16 Nick Herman: Where is she employed?
- 17 Thomas West: Durham Police Department.
- 18 Nick Herman: What does she do for them?
- 19 Thomas West: She is a homicide investigator.
- 20 Nick Herman: When is her retirement on the horizon?
- 21 Thomas West: Three years.
- 22 Nick Herman: How is it that you came about trying to make this application?
- 23 Thomas West: After I retired in 2002, I and my wife started working for different rescue groups rescuing animals,
24 cats and dogs, from shelters about to be euthanized for rescue groups. They would get the place while we held
25 them as foster. We did this for nine years and wanted to go ahead and build a kennel because we are so familiar
26 with animals.
- 27 Nick Herman: This facility is a boarding facility?
- 28 Thomas West: Yes sir.
- 29 Nick Herman: And a grooming facility?

- 1 Thomas West: Yes sir.
- 2 Nick Herman: If I had a dog I would bring it to you to groom and then I would pick it up and if I went on vacation I
3 might leave my dog with you for whatever my vacation days were?
- 4 Thomas West: Yes sir.
- 5 Nick Herman: And then you have heard, I have mentioned this to the board; you intend to have cats as well as
6 dogs.
- 7 Thomas West: We have a big room with different types of kitty combos. Not foster those but house those and
8 also, if one of our rescue groups calls and there is about to be an animal euthanized we will bring it and give it a
9 home but we are not going to foster...
- 10 Nick Herman: The question was raised earlier, you saw the number of runs, your initial phase is to have how
11 many?
- 12 Thomas West: Sixteen.
- 13 Nick Herman: With a maximum build out to?
- 14 Thomas West: Fourteen more would be 30.
- 15 Nick Herman: Whether or not you do that will depend on how things go.
- 16 Thomas West: Right.
- 17 Nick Herman: When you take the animals outside, do you have any limitations on that?
- 18 Thomas West: We will only take three or four, mainly just four because we have four dogs to exercise other than
19 to just take them on a lease. They would have four enclosures where they could exercise to get them out of the
20 rooms.
- 21 Nick Herman: How do you intend to finance this project?
- 22 Thomas West: I was in the military and got a VA loan on my house.
- 23 Nick Herman: So this is what you plan to do when you retire?
- 24 Thomas West: Yes me and my wife.
- 25 Nick Herman: Who will run the facility?
- 26 Thomas West: Both of us. I will run it primarily until my wife retires. We will both be equally involved.
- 27 Nick Herman: Do you anticipate any other employees other than you and your wife?
- 28 Thomas West: Down the road if we get busy, it could be one of my neighbors.
- 29 Nick Herman: Who will do the grooming?
- 30 Thomas West: A guy from...
- 31 Nick Herman: You would have one employee?

- 1 Thomas West: Just start out one day a week to see how the business goes.
- 2 Nick Herman: Otherwise the facility is totally run by you and your wife.
- 3 Thomas West: Right.
- 4 Nick Herman: Have you talked with various neighbors about your proposed plans?
- 5 Thomas West: Yes sir.
- 6 Nick Herman: Have you talked with Ms. Catherine Marlow and Ms. Linda Moore?
- 7 Thomas West: Talked to Linda... share the same driveway.
- 8 Nick Herman: Ms. Moore, is she the one who lives right across the way from you?
- 9 Thomas West: Yes. She lives right here.
- 10 Nick Herman: Okay. Do they support your application?
- 11 Thomas West: Yes sir.
- 12 Nick Herman: Did you obtain affidavits from them?
- 13 Thomas West: Yes sir.
- 14 Nick Herman: Did you and your wife speak with other neighbors?
- 15 Thomas West: Yes. Catherine Marlow, she shares the driveway, she signed the affidavit. All the rest of the
16 neighboring properties and all those signed off they supported the kennel.
- 17 Nick Herman: Steve Elkins... and they have all registered their support?
- 18 Thomas West: Yes sir.
- 19 Nick Herman: Are the affidavits shown here on Exhibits A1 and A2.
- 20 Thomas West: Yes they were notarized.
- 21 Nick Herman: That A3 is the signature lines of the other neighbors.
- 22 Thomas West: Yes sir.
- 23 Nick Herman: Have you and your wife reviewed the recommendations that Mr. Harvey's office had made in
24 writing to this board?
- 25 Thomas West: We sure have.
- 26 Nick Herman: That is contained in the findings of the Orange County Planning Staff and a portion of that
27 document that contains their recommendations on page 12.
- 28 Thomas West: Yes sir.
- 29 Nick Herman: You have read that?

1 Thomas West: Yes sir.

2 Nick Herman: There are eight recommendations made as conditions on the Special Use Permit?

3 Michael Harvey: If I could please interrupt you for one second. Mr. Herman is referring to page 146 of your
4 abstract which you will note at the bottom there is a page 12 but it is page 146 of the abstract.

5 Nick Herman: Page 146 contains the recommendation page from the Orange County Staff. You have reviewed
6 the eight of them?

7 Thomas West: Yes sir.

8 Nick Herman: Do you agree with these eight conditions?

9 Thomas West: Yes sir.

10 Nick Herman: I am going to add another if Orange County makes an additional recommendation that we respect
11 to certain buffering that we have heard a little bit about that there would be coordination/consultation with the staff
12 in connection with the selection of appropriate buffering plants, are you agreeable to that?

13 Thomas West: Yes sir.

14 Tom Brown: When we get to the conditions phase, there may be one or two other conditions that will be added
15 on. If you recall, we were talking about Fire Marshal approval of any site altered access to the property. Don't be
16 surprised if that is part of the conditions in addition on the septic. We will probably discuss that the state permit
17 will be required before any land disturbance takes place.

18 Nick Herman: Assuming that those were conditions imposed by the board, would you be agreeable to them?

19 Thomas West: Yes sir.

20 Tom Brown: Don't be surprised if that comes up in the discussion.

21 Nick Herman: I just want to let you know that he is agreeable to those if that is what you choose to do.

22 Tom Brown: Are there any questions from the board?

23 Larry Wright: You mentioned that you share the driveway with some neighbors?

24 Thomas West: These two I have notarized with notes that they didn't oppose it.

25 Larry Wright: Are the neighbors you're talking about, are they aware of the added traffic that will be on this
26 driveway?

27 Thomas West: Yes sir. Catherine Marlow said she would not mind it a bit and Linda Moore, she offered her help
28 at the kennel. She is retired.

29 Larry Wright: Have you come to an agreement about how that will be maintained?

30 Thomas West: I will maintain it, I maintain it now.

31 Larry Wright: Are those affidavits in the packet?

32

- 1 Michael Harvey: No. They have been submitted here. The secretary can pass them around for review but they
2 are the applicant's attachment in Exhibits 1 through 3.
- 3 Nick Herman: One more, Mr. Vic Knight.
- 4 Vic Knight: Everett V. Knight, I live in Raleigh and I have been sworn in.
- 5 Nick Herman: Your employment.
- 6 Vic Knight: I am an appraiser with Chapel Hill Appraisals.
- 7 Nick Herman: You are certified in this state?
- 8 Vic Knight: Yes sir.
- 9 Nick Herman: Which certification do you have?
- 10 Vic Knight: I am a certified general, most folks might not necessarily understand that, but that is a commercial
11 and/or residential appraiser.
- 12 Nick Herman: That is the most expansive one you can have in North Carolina?
- 13 Vic Knight: Right.
- 14 Nick Herman: How long have you been an appraiser?
- 15 Vic Knight: About 28 years.
- 16 Nick Herman: You have testified in court?
- 17 Vic Knight: Yes sir.
- 18 Nick Herman: And have you testified before this board?
- 19 Vic Knight: Yes sir.
- 20 Nick Herman: Have you testified in connection with at least one other kennel?
- 21 Vic Knight: Yes sir.
- 22 Nick Herman: Was that before this board?
- 23 Vic Knight: Yes sir.
- 24 Nick Herman: That was the Lonsway case?
- 25 Vic Knight: That was one of them.
- 26 Nick Herman: What was the other?
- 27 Vic Knight: Pet Behavior Help which is a dog training facility.
- 28 Nick Herman: Is that in connection with the board that...?

1 Vic Knight: Yes sir.

2 Nick Herman: Have you conducted the Impact Analysis, as it is call that is attached, as one of the attachments to
3 the Orange County's staff's materials presented to the board?

4 Vic Knight: Yes sir.

5 Michael Harvey: For you edification, it is contained within Attachment 1 which is the applicant's submittal package
6 submitted on page 067 and concluding on page 110.

7 Nick Herman: Mr. Knight, was that prepared in accordance with any applicable USEPAP (Uniform Standards
8 Practices and Policies and Procedures) standards?

9 Vic Knight: Portions of it are. USEPAP has a very broad standard about consulting and there are some specifics
10 that are incorporated into that process which is a guideline.

11 Nick Herman: The USEPAP I am referring to is the uniform standards for the professional appraiser practice.

12 Vic Knight: Yes sir.

13 Nick Herman: Did part of your analysis use...

14 Vic Knight: This is not in the same fashion postured as if you were doing a single family residential appraisal or
15 any individual property appraisal. This is an Impact Analysis which analyzes data for more corporate sense than
16 an individual parcel.

17 Nick Herman: I guess what I am getting at is accordance with methodologies that would otherwise be consistent
18 with a USEPAP standard.

19 Vic Knight: Yes sir.

20 Nick Herman: And what was your assignment? Let's be clear about what your assignment was.

21 Vic Knight: The basic assignment was to, in looking at the property, do an analysis of the proposed site plan with
22 the narrative that was provided to see what impact, if any, those proposed improvements might have on any
23 surrounding properties as if they are one hundred percent complete. That is an assumption which is defined in
24 my report.

25 Nick Herman: You had the site plan and other information in connection with this facility?

26 Vic Knight: Yes sir.

27 Nick Herman: You went out and saw the area.

28 Vic Knight: I was there in September of last year.

29 Nick Herman: You had the occasion to hear, for the record, all the testimony that you have heard thus far in this
30 area?

31 Vic Knight: I have.

32 Nick Herman: In light of your assignment, what was your conclusion about this proposed facility in terms of its
33 impact on adjacent property?

1 Vic Knight: I can't find any market evidence that would indicate that there is any negative value impact on any of
2 the surrounding properties or neighborhood if this facility was complete per the plans and specifications that were
3 provided.

4 Nick Herman: Explain the basis for your conclusion or summarize that for us.

5 Vic Knight: To begin with, if you understand what the initial scope was in terms of the basic investigation, at that
6 point you would want to have some understanding of what impact a similar kennel might have on some form of an
7 animal facility. What I did was look at several others that exist in the county and/or surrounding areas identified
8 that were in existence in Orange County. One of them is on the border of Durham County so I guess you could
9 say it is four. The one that has appeared to be the most similar due to the size of the facility and potentially the
10 number of animals that might be there is Sunrise Pet Facility which is off Business Hwy 70 on the edge of Orange
11 and Durham County. There is a nearby neighborhood there, with this analysis which is Whispering Pines. We
12 have looked at evidence within the neighborhood specific over a period to see what appreciation levels may have
13 been taking place in a very broad sense over an extended period of time of which the duration period the dog
14 facility that is there in the area and the kennel facilities in the area existed through that entire time frame. There is
15 a base analysis when we started looking at properties in and around the Wildwood Community just south of
16 Hillsborough. That was a control set of data. The reason we picked a control set of data is because there was a
17 point in time where the initial Wildwood Community existed later than the Hampton Point commercial facility was
18 built adjacent to that. We did an analysis to see what impact that might have had in terms of appreciation values
19 so you would see something. That is before and after affect from one base point and then compare that to
20 something ongoing. When you analyze those two, there is a nominal difference between appreciation levels in
21 the two locations. There is no evidence from the market data that indicates the activity generated from the kennel
22 on 70 would have a negative impact into that local market area of Whispering Pines.

23 Nick Herman: The kennel that is near Whispering Pines subdivision is that the Sunny Acres Pet Resort.

24 Vic Knight: Yes. Sunny Acres is correct.

25 Nick Herman: That was the most comparable of the kennels that you could look at?

26 Vic Knight: It had the largest number of animals on a consistent basis as compared to the others that exist. And
27 the others are fairly intermittent as to when they are populated by animals.

28 Nick Herman: What was your description of their neighborhood where, page 12, you refer to this equestrian,
29 bovine, and other agricultural uses. Summarize the area where Mr. and Mrs. West live.

30 Vic Knight: I guess in a broad sense it is an otherwise rural location but rural being a mixture of single family
31 homes and a number of activities that are agriculturally based. There are a couple of horse facilities that are in
32 the general area. Cattle, as well as chickens are being raised in the area as well. Goats are literally being raised
33 on the road traveling into this property so it is a good mixture of agricultural animals in the immediate and general
34 area. Agricultural and residential uses.

35 Nick Herman: Is there anything about this proposed facility that is inconsistent with that area?

36 Vic Knight: No. It would be similar to other usage.

37 Nick Herman: Your bottom line conclusion on the value question is what?

38 Vic Knight: The market evidence does not indicate there would be any negative impact on the surrounding
39 properties from the building and operating of this particular kennel as proposed.

- 1 Nick Herman: Is there anything else you need to add?
- 2 Vic Knight: The only thing within the general neighborhood, there are a couple of small other zoning that are
3 essentially at the intersection of White Cross and Old Greensboro Road, there are, I forget the exact zoning
4 classification, EC5 was one of them and I think there was some other form of a neighborhood commercial use but
5 they are on a relative small parcel but there is a mix of other things going on there.
- 6 Larry Wright: You refer to Sunny Acres Kennel near Whispering Pines. How far is that from Whispering Pines?
- 7 Vic Knight: Probably at the closest point less than 300 feet.
- 8 Larry Wright: Your measurements, do they measure the impact of this kennel moving into that area?
- 9 Vic Knight: You are making an assumption that the improvements that are proposed....
- 10 Larry Wright: I am asking do your measurements take into consideration before the kennel is there and what
11 happens to the property. How those property values were as opposed to after the kennel is there?
- 12 Vic Knight: No sir. You don't do anything beforehand. The assumption is based on
- 13 Larry Wright: I've done a lot of research. You do want to have a benchmark so you are only measuring property
14 values after the kennel is in operation.
- 15 Vic Knight: It's an assumption.
- 16 Larry Wright: So it is an assumption after
- 17 Vic Knight: The kennel facility doesn't exist right now.
- 18 Larry Wright: I am talking about Whispering Pines. You have data here on Whispering Pines. You have not
19 measured it before that Sunny Acres Kennel became in operation. Is that right?
- 20 Vic Knight: That is right.
- 21 Larry Wright: So you have only measured it after they have been in full operation.
- 22 Vic Knight: I say during, there is no before.
- 23 Larry Wright: During full operation.
- 24 Vic Knight: Yes sir.
- 25 Larry Wright: So we do not have data on the impact of that kennel moving into the area, right?
- 26 Vic Knight: No. The base data is from ... it is called parrot analysis. When you look at an existing neighborhood
27 that didn't have any impact from a more intense use and then what happened, that intense use...
- 28 Larry Wright: We don't have that with ...
- 29 Michael Harvey: I am sorry to interrupt Dr. Wright, but I am assuming you are referring to the numbers that begin
30 on page 83 of the abstract?
- 31 Larry Wright: Yes.

- 1 Michael Harvey: Just for the board's edification.
- 2 Larry Wright: So these are not before. These numbers don't show anything about sale of property before this
3 kennel came.
- 4 Vic Knight: It is an incorporation of sales that existed before Hampton Point was and built.
- 5 Larry Wright: I am not talking about Hampton Point; I am talking about Whispering Pines.
- 6 Vic Knight: There are no sales before that particular facility.
- 7 Larry Wright: We are talking about the kennel?
- 8 Vic Knight: That is correct.
- 9 Larry Wright: So we cannot have a before, we don't have any data on sales before the kennel came into
10 operation.
- 11 Vic Knight: The one on US 70?
- 12 Larry Wright: Right.
- 13 Vic Knight: There is no data.
- 14 Larry Wright: So we are only looking at after so we haven't measured the impact of the kennel going into
15 operation.
- 16 Vic Knight: Not on 70.
- 17 Larry Wright: Hampton Point, that is another, that is an... but is not a kennel. Hampton Point, in my mind, a
18 shopping center.
- 19 Vic Knight: It is.
- 20 Michael Harvey: Dr. Wright, you are referring to the numbers on page 78 of the abstract through page 82.
- 21 Larry Wright: In your years of, in Orange County, in making assessments, can you give me one example where
22 an enterprise moved into the area and it lowered the property value.
- 23 Vic Knight: I cannot.
- 24 Larry Wright: So really... I am not going to say anything.
- 25 Nick Herman: You can only go by the data that is available, right?
- 26 Vic Knight: Yes sir.
- 27 Nick Herman: And one of the things that affects values or the impact of a particular facility, right?
- 28 Vic Knight: Yes.
- 29 Nick Herman: If you have excessive noise or traffic and depending on the amenities of the area, if you destroy the
30 amenity, you reduce the value of the properties around...

1 Vic Knight: In general, that would be true.

2 Nick Herman: What impacts would affect value? Is there anything you know about this facility and its impact that
3 would indicate to you that there would be any diminishing value of contagious property?

4 Vic Knight: No. I cannot find any market data that would indicate that.

5 Nick Herman: Other than the market data, is there anything as a matter of common sense, or in general that
6 would cause you to be concerned.

7 Vic Knight: The discussion has already taken place about the road and access. Those were the only things.

8 Nick Herman: And the acoustical evidence. Has Gene Lonsway constructed his facility?

9 Vic Knight: Actually, I don't know.

10 Nick Herman: That is all.

11 Tom Brown: Does the board have any further questions? Do we have any citizens in the audience that would like
12 to comment in opposition?

13 Gene Poveromo: My name is Gene Poveromo and I have been sworn in. I have a question about procedure. I
14 would like to pose some questions in response to some of the testimony I have heard. Do I have those options to
15 make those questions now before I make my presentation because some of those answers might dictate what my
16 presentation would be like?

17 Tom Brown: Please proceed.

18 Gene Poveromo: I am going to do an introduction before I cross examine because I was not intending to do that
19 but I heard some interesting things that I need to clarify. Members of the Board of Adjustment, good evening. My
20 name is Gene Poveromo. I live at 4639 Old Greensboro Road and my house is the house they refer to as being
21 within 580 feet of the site. So it is the house to the northeast. The purpose of addressing the board tonight is not
22 to oppose this kennel. My interest is to protect the value of my property and the character of the neighborhood. I
23 will provide additional evidence so the board has a more complete picture of the situation. I want to describe the
24 negative impact associated with this proposed commercial business and suggest some ideas that I believe could
25 lessen these negative impacts. I would like to thank the Orange County Planning Staff for their time and
26 professionalism. They spent a lot of time making copies and responding to emails. I really appreciate your
27 professionalism. Thank you. This past fall, the applicant, Mr. West, came to our living room and told us about the
28 kennel. My immediate response to Chuck was that I was concerned with traffic and noise and as he kept
29 describing it I said I have concerns about traffic and noise. After having reviewed the materials before you tonight,
30 I still have those concerns. At my suggestion, Chuck and Delois, agreed to meet with my wife and I and we
31 discussed this proposal around their kitchen table. Unfortunately, several days later, Chuck left me a voicemail
32 message on my phone informing us that his consultant advised them not to speak to us about the proposed
33 kennel. Since that time, we have not talked about the matter. That turn of events was unfortunate. It has made
34 this process much more difficult and uncomfortable than necessary. So I considered tonight's meeting as our
35 opportunity to continue our neighborly discussion we weren't able have several months back so a lot of what I am
36 going to present to you is what I was hoping to discuss with Chuck and Delois on a more informal basis. Let me
37 start and give you a little more about my background. I am a land use planner. I have a degree from Rutgers
38 University. I have been practicing land use planning for 25 years. I have worked in Boone County Missouri for 15
39 years. I am currently a land use planner with the Town of Chapel Hill. I have been staff to the Board of
40 Adjustment at the county and civil level as well as staff to County Commissioners, Planning Board and Town
41 Council. I have worked on all types of proposals and processed various applications, including conditional use

1 permits, appeals, variances, and zoning enforcement. Basically, I have spent my profession conducting impact
2 analysis on land use issues, recommended conditions, working with applicants, neighbors and boards, so if you
3 were a member of a Board of Adjustment in Chapel Hill, I would be Michael Harvey. Tonight, I appear before you
4 as a concerned neighbor but I do bring a perspective of a professional land use planner. I intend to outline my
5 concerns and share some additional conditions for the board's consideration. I will speak about some impacts
6 that I don't believe were discussed in the applicant's materials. I will share my observations on topics I believe the
7 Impact Analysis does not address. I will state some questions that I think need to be answered before the board
8 acts on this application and I will offer some possible options for the board and applicant to consider. That is my
9 introduction. If the board is okay I would like to ask some questions and I would like to start by asking Mr. Knight
10 a question.

11 Tom Brown: Mr. Knight if you would just come forward and we will ...

12 Gene Poveromo: You mentioned something about the distance between Whispering Pines and Sunny Acres.
13 Could you repeat how close they are to each other?

14 Vic Knight: The closest point is about 300 feet or so.

15 Gene Poveromo: Could you describe what exactly is at the 300 foot point?

16 Vic Knight: The northeast corner of Whispering Pines.

17 Gene Poveromo: Could you tell us approximately what the closest residence is? Is that the 300 feet?

18 Vic Knight: The property line.

19 Gene Poveromo: How close, in Whispering Pine, is the closest residence to Sunny Acres?

20 Vic Knight: Maybe another 50 to 65 feet.

21 Gene Poveromo: In your discussion, you mentioned another adjacent neighborhood when you were talking about
22 Whispering Pines and making comparison about property values. What did you mean by the word adjacent?

23 Vic Knight: I was looking at another neighborhood adjacent to Whispering Pines.

24 Gene Poveromo: I did review your analysis and I found the information to be somewhat interesting but I was a
25 little confused about what area you were actually talking about. For example, your report talks about the
26 neighborhood, the general neighborhood, the immediate neighborhood, immediate surrounding neighborhood, the
27 surrounding neighborhood, the entire neighborhood area, the area, the general area, the nearby area, the
28 surrounding properties, the immediate surrounding properties and developments nearby. My question to you is
29 could you define that geographic area for me? I described 13 different geographic locations and I was having a
30 hard time determining where you were talking about.

31 Vic Knight: You have taken all those out of context so I don't know which ...

32 Gene Poveromo: That is fair. I would like the opportunities to ask Mr. Knight a question when I am done with my
33 presentation. I do have a few questions for Michael. The questions I have, there was discussion about the initial
34 phase of 16 to 30 dog runs. It is funny how it is 16, 30 maximum. Would that require another permit or would this
35 permit allow the 30 runs.

36 Michael Harvey: That is a good question and I will answer as the site plan, there is to be 16 dogs. The
37 applicant's testimony is that the original site plan that was submitted to this board for review back in December
38 showed an initial construction of 16 runs. Subsequent to the public hearing being scheduled, the applicant

1 determined it would be in their best interest to come before the court asking for, as they have testified tonight, 30
2 total runs to house 30 animals. In answer to your question, strict interpretation of the zoning, if Mr. West comes
3 before this board with a site plan showing 16 constructive runs with a note on the site plan as contained on the
4 original document saying there will be additional runs constructed at a later date unspecified, according to Article
5 8, Section 8.7.1 of the ordinance, my determination is that would be a modification and would have to come back
6 before this board to obtain the additional runs to be constructed. What I am hearing the applicant indicate this
7 evening is they wish the board to take action on allowing this facility to be developed with 30 runs to house
8 animals. That would include canines and felines.

9 Gene Poveromo: Could you summarize the permit if it is granted as currently proposed would allow how many
10 runs?

11 Michael Harvey: The site plan has already been pointed out by one of the board members and shows 28. I
12 believe the applicant's attorney has testified that it would show 30 total runs to be constructed.

13 Gene Poveromo: So this permit would approve 30 runs?

14 Michael Harvey: As the applicant has asked for this evening.

15 Gene Poveromo: The current application shows an exercise boundary. If that was to be expanded, would that
16 require a new permit?

17 Michael Harvey: It might... with wording of the current ordinance and I might also add the wording of the
18 proposed Unified Development Ordinance, yes.

19 Gene Poveromo: Okay.

20 Michael Harvey: For the board's edification, as you all are probably aware, Orange County is in the process of
21 adopting a Unified Development Ordinance which is a combination of all existing land use regulations. At least
22 that is what we hope and pray for. Dr. Wright also serves on the planning board as we are working on this item
23 but for the board's edification, the standards and regulations governing permits and whatnots are not being
24 altered.

25 Gene Poveromo: Mr. Stewart, I have some questions for you. In fact, you mentioned something about 65
26 decibels at the property line.

27 Noral Stewart: I don't believe I did. The property line ordinance limit is 60 so it would be below 60.

28 Gene Poveromo: Sorry 60. Help me understand when you are referring to 60 decibels, what are we measuring?
29 Let me re-phrase the question. Are you stating that there is a county ordinance that regulates barking of dogs and
30 requires a 60 decibel reading at the property line?

31 Noral Stewart: There is a county ordinance that regulates sound crossing property lines of any source. Doesn't
32 have to be barking dogs. It could be your air conditioning condenser. It limits it during the daytime to 60 decibels.

33 Gene Poveromo: So would it include dogs?

34 Noral Stewart: It would include dogs. Certain things may be exempt but dogs are not one of those things that are
35 exempt.

36 Gene Poveromo: You mentioned a copy of a letter from January, is that part of the record?

37

1 Noral Stewart: I do not know if it was submitted or not. I prepared that letter and provided it to Mr. West. I am
2 sure it has been submitted.

3 Tom Brown: I don't recall that.

4 Noral Stewart: It was a brief letter stating what I have stated tonight.

5 Gene Poveromo: Are there other mechanisms the applicant would contemplate in order to provide greater ____
6 other than green vinyl and a chain link fence?

7 Noral Stewart: Are you speaking about when the dogs are outdoors?

8 Gene Poveromo: I am speaking about something to mitigate noise.

9 Noral Stewart: When the dogs are indoors in the kennel at night, he has done about as well as he could do. I
10 wouldn't say he couldn't do any better but he has done a very good job. I don't think there would be any issues of
11 anybody hearing much when they are indoors at night. As I have indicated, when they are outdoors, if the dog
12 barks, you will hear it. I don't think anyone needs me to tell you that. The levels should not exceed the ordinance
13 limits at the boundary and would be significantly less once they reach homes. As to what could be done for the
14 outdoor noise, keep the dogs indoors but if you are putting them outdoors, short of really closing them in, he has
15 done about what he can do.

16 Gene Poveromo: In your opinion, in your professional opinion, is there another type of fencing material they could
17 employ that would produce a better sound barrier and what would that be?

18 Noral Stewart: Not that would produce a situation where there is ventilation through it. You would basically have
19 to close it and seal it up as an indoor area.

20 Gene Poveromo: The answer is no. On the New Hope project, I have a copy of your letter and it states "with
21 these improvements, the sounds of all the dogs barking in the kennel would be no greater at the nearest boundary
22 than that of a single large dog over one half mile away." Is that something ...

23 Noral Stewart: We are a similar situation when the dogs are indoors.

24 Michael Harvey: I am sorry but Mr. Poveromo, could you remind the board of the context that letter was written
25 for. Were you referring to the Gene Lonsway case?

26 Gene Poveromo: Yes. Thank you very much. I am very glad to see you are working with the applicant. Part of
27 my presentation will be showing this letter and saying we would like to see something like this or this is really
28 great.

29 Tom Brown: Mr. Herman, at the end, I will give you an opportunity for a rebuttal after this testimony.

30 Gene Poveromo: I do have some questions for Chad about the solid waste facility. There was a statement that
31 there were several possible options other than the proposed. Why not explore that and come in with that
32 information at this point now?

33 Chad Abbott: That is not regulated by this board. This board does not regulate what the state allows for a permit.
34 They allow different options for different size properties. The only other option for this size property would be a
35 spray system and that would be up to the state and the applicant as far as what kind of system they would use.
36 The drip system is often the most sought after than a spray system. A spray system would fit as far as a property
37 this size is the only other option. There is surface discharge where it is discharged directly into a ditch or creek or
38 low area but that is not allowed if you had sufficient room to put drain fields.

1 Gene Poveromo: What is prohibiting this information to this board and before the board acts on this application?

2 Chad Abbott: I presented this to the best of my ability to this board.

3 Gene Poveromo: Let me re-phrase the question. What is preventing the applicant from providing this board with
4 an approved release water discharge permit from Orange County before they make a decision on this application?

5 Chad Abbott: Orange County will not issue anything until they receive a letter from the state saying it is an
6 approved system. I think Mr. West is going to spend anywhere from \$4,000 to \$6,000 to approve a septic system
7 not knowing if the board will approve it and if it is going to be made a condition of approval. Obviously he will
8 have to obtain that permit before disturbing land at the premises.

9 Gene Poveromo: Thank you. That helps. One more question. You talked about other options but then there
10 was a discussion about would there be tearing up of vegetation in the woods and you said no. Is that correct?

11 Chad Abbott: I am saying no mass clearing. It would be selective cleaning up to remove ground litter, rotten logs
12 that would prohibit the...

13 Gene Poveromo: Based on the possible options, you might come back with that might be approved; there would
14 be no mass clearing. Thank you for giving me that opportunity. I do have a PowerPoint presentation I would like
15 to show you now.

16 Michael Harvey: Mr. Chairman, may I suggest the board take a five minute recess.

17 Tom Brown: The board will recess for five minutes for technical issues.

18 Tom Brown: The board is in session.

19 Gene Poveromo: We will start with a photo of our two story farm house. We have lived here for almost 15 years.
20 This is the Elkins farm house. It was built in 1903 by Steve and Larry Elkins' grandfather. It is a beautiful isolated
21 quiet setting. It is located at the end of a 1,000 foot long gravel road and Chuck and Delois' house is down the
22 road. This is the driveway coming into our house. There is an area map to give you a better idea. In order for
23 you to fully appreciate tonight's discussion, I think it would be helpful to identify our home and property on this
24 aerial photograph. Old Greensboro Road is off the page. Here is the gravel road heading north. Our property
25 starts at this point. The road continues south, if you go straight you are in our driveway. If you turn to the left you
26 are going down the edge of our property and then you come out here where Chuck and Delois' house is. This is
27 where the kennel is proposed. I took an opportunity to take the site plan the applicant submitted and located our
28 house on that site plan so that gives you a sense of how close our house is to the access easement. It is about
29 30 feet away and it is about 50 feet from the existing driveway. My wife and I do have concerns and we want to
30 share those concerns with you. Again, we are not here to stop you from building your kennel. We are here to
31 share information, ask the board for help and just look for some clarity. Tonight, I will speak a little about property
32 values, access traffic, roadway construction, maintenance, wastewater, noise and vegetation buffers. I wanted to
33 talk about impacts on property values.

34 Nick Herman: Just because I have to for the record, I'll object for the record because the statute requires expert
35 testimony on property value as well as traffic impact. I didn't mean to interrupt.

36 Gene Poveromo: I will make some general comments and concerns that I have and feelings. We live in a house
37 that is situated on the historic Elkin's family site. It is well over 100 years old. We have spent the last 10 years
38 remodeling, upgrading and restoring and fair to say saving this landmark home. Locating the kennel without dog
39 runs and inviting commercial traffic, employees, delivery trucks within 30 to 50 feet of our home, will alter the
40 historic setting of this home. As a property owner, as someone who owns a home, I don't believe this kennel will

1 maintain or enhance the value of our property or the history of this land. The next thing I would like to talk about is
2 access road design and maintenance. For orientation, here is Old Greensboro Road. Again, the applicant is
3 proposing to use this 1,300 foot long road for access to their site. There are three questions I believe to be
4 discussed and considered. One is the use of an offsite, private residential roadway for commercial activity
5 appropriate or allowed. What are the impacts of the proposed 20 foot wide gravel road way and who is
6 responsible for maintaining a 20 foot wide commercial road. Let me orient folks to the relationship of the road to
7 our front yard. This photo is looking directly at our home, Old Greensboro Road, is about 1,000 feet to the south.
8 Fork to the right is our driveway; fork to the left is a continuation of the access road to the kennel. Here is a grape
9 harbor that is on our property and is mentioned in one of the notes.

10 Someone in the audience: On your property? Why don't you correct that?

11 Gene Poveromo: Thank you. Here is a grape harbor that is adjacent to our property. Let me go back and clarify.
12 Here is the property line and there is the grape harbor. As Chuck points out, it is on this property here so he is
13 correct, it is not on our property but we enjoy the area so we feel, legally it is not on our property but it is our side
14 yard. I appreciate that clarification. This next photo reveals the visual and geographical relationship between a
15 portion of the access road and our front door. This view was taken from our front yard looking south onto the
16 access road. The point where the road disappears in the background is about 400 feet north of Old Greensboro
17 Highway. The field on the right portion of the road extending to the tree line is a portion of our property. To the
18 right and foreground is our immediate driveway. This photo reveals that approximately 500 feet of the access
19 road approaches our front yard to the front door to our home in a direct line. I am troubled by the impact of adding
20 commercial vehicular trips practically in our front yard traveling back and forth along this prominent... This next
21 photo represents existing conditions adjacent to our property line so this road is approximately 300 feet whereas
22 the last photo was taken looking south. This photo is looking due west at the point where the access road in our
23 driveway fork. In the background where the image disappears, this is the entrance to the kennel site. Again, here
24 is the grape harbor. What is striking about this photo is it is with the last immediate proximity of this access road
25 to our side yard. The photo offers a good fill of the narrow, secluded, established vegetation along both sides of
26 the road. With this orientation in mind, let me return to my first section. Is the use of an offsite private residential
27 road for commercial activity appropriate or allowed? The next few images, I will take us down the road as you
28 come off Old Greensboro Highway. This is starting on Old Greensboro Highway. This is a narrow 12 foot wide, it
29 is a quiet, residential road. Portions of the lane are lined with large trees and fenced roads. It provides access to
30 11 residential sites. Our home is located approximately another 700 feet down the road. In the middle of the
31 photo to the right is another road that provides access to 11 of the 6 homes. This access is subject to a
32 maintenance agreement that encumbers property owners who use the road. I would like to enter this into the
33 record. I think my wife has enough copies for the board members and a few extra copies to share. We are
34 handing out an easement and road maintenance agreement.

35 Michael Harvey: Is it your intention that this is your Exhibit 2 and your PowerPoint is Exhibit 1?

36 Gene Poveromo: It is my intention, yes. Some of my concerns is that this proposed access road is not located on
37 the applicant's property, it doesn't appear commercial use was anticipated in the easement. It is a very long
38 access. The facility will not be visible from the roadway. Signage is not allowed on Old Greensboro Highway and
39 it is unlike other kennels that I have looked at in the county so when this application came to my attention, I went
40 out and drove around the county to survey some other kennels and what I have discovered is that they are almost
41 always immediately visible from the public street. The access between the access street and the facility is located
42 on the same property and the access drive to the facility is short. These photos are examples of kennels we have
43 looked at. My conclusion is this roadway was not intended or constructed for this type of use. The maintenance
44 agreement was intended to serve rural, residential activities and does not contemplate commercial use. The
45 kennel location is not similar to what is commonly found in other kennels in the area. If we set those issues to the
46 side a minute, the next question becomes, what are the impacts of a proposed 20 foot wide gravel roadway?
47 Here is the view from the south side of the property. Again, we greatly appreciate your intent to protect the grape

1 harbor and to construct the road as you were showing in the notes. I believe the plan is to improve the roadway
2 and to not change the character as much as possible. I believe the plan as described would retain the right side
3 of the roadway edge as shown in this photo because there is mention of protecting this grape harbor and I really
4 appreciate that. However, I think it would be appropriate for us to have some additional information and clarity on
5 this matter. For example, what is the impact on this side of the road? Will this vegetation be removed? Looking
6 at this view, what will the roadway look like from this vantage point? Is the proposal to add gravel to the left and
7 right side of the roadway and if so, how much will extend beyond the existing ditch along the open field? Again
8 will the expansion of the roadway eliminate this landscaping, vegetation that currently buffers our front yard from
9 noise, dust, light and cars on the current road? Finally, how will this view from our side yard and back yard
10 change? Will all the vegetation on the opposite side of this roadway be removed and thereby open up an
11 extensive window into the adjoining property? My conclusion is that much remains unknown about the proposed
12 improved access. Again, I was hoping to have the discussion with the applicant. A neighborly discussion and talk
13 about all these issues so I apologize for having to bring this to your attention. I was hoping we could have
14 discussed this earlier. The next topic I would briefly mention is maintenance. The document you have is a
15 recorded maintenance declaration which outlines the maintenance agreement for residential use. It specifies the
16 upkeep of the 16 foot wide gravel roadway or public roadway. It does not refer to maintaining a roadway of a
17 different standard so this application does not address a plan to maintain a 20 foot wide commercial roadway.
18 What's most important to remember is that if you grant this permission, the permit runs with the land not the
19 current owner. Although, I recognize there may be good intentions on the part of the applicant, there needs to be
20 more information on how the road will be maintained so we can understand the potential impact of this issue. My
21 recommendation is to continue the public hearing to a future date in order for the applicant to provide additional
22 information to address these outstanding concerns and questions. I think the submission of this additional
23 information is reasonable and appropriate. It would allow an opportunity for us to meet with neighbors and
24 discuss the issues and work together on possible solutions on the ground. Previous applications before this
25 board, Duffy Gilligan, returned to the board in order to address similar issues. Next, I would like to share an idea I
26 began working on several months ago. I think it is something that could be a win win situation. I started like all
27 good planners looking into another option for access to this site. I think there may be an opportunity for another
28 access that allows direct access from Old Greensboro Road be limited to proposed use, have no residential
29 conflicts, much shorter, requires less infrastructure and cost, I believe, would separate residential use from
30 commercial activity, removes uncertainty of right to use and allows commercial signage at the highway. I got in
31 touch with Mr. Williams, who is here, and he and I have had a conversation and we talked about, I approached
32 him, I made him aware of this project and I said would you consider discussing the possibility of providing an
33 alternate access from this point to this point? I realize there is nothing that this board can do to require Chuck and
34 Delois to have this alternate access I just think there may be an opportunity, there may be an advantage, there
35 may be a more cost effective to approach this so I am hoping there would be some time to investigate this
36 possibility. The issues this would address is the current visibility at the road to the current driveway. It is very
37 difficult to see where you turn off and there is a sight distance problem. This is showing where this proposed site
38 could be located. I am concerned that we don't have a notice of improvement permit denial from Orange County
39 Health Department. Article 8.2.4 requires method of inadequacy provisions of sewage disposal facility solid waste
40 and water services. I think it is questionable as to whether the board can affirmatively approve this application
41 without additional documentation. Page 7 of the staff reports, if you note where the boxes are yes or no, neither
42 of the boxes is checked. I think this information is reasonable, appropriate and should be provided especially if it
43 is a drip system. I am wondering all kind of odor would be generated by a drip system. I did have some concerns
44 about noise. I was glad to see that they have a Stewart Acoustical Consultant on board. Finally, I have some
45 questions about vegetation buffers and fencing. I think there are opportunities for additional landscaping and
46 vegetative buffers and I think because this kennel includes outdoor runs, it is reasonable to require additional
47 fencing and screening standards. I want to talk about something that was missing from the site plan. There is a
48 30 foot wide Duke Energy easement that cuts through the site so this area, the vegetation is cleared so on the
49 buffer plan, I think the planning term that Nick used was squiggly line. On the plan, the squiggly line doesn't show
50 where the Duke Energy cuts through the buffer so that cleared area is not shown on the plan. This is the actual
51 cleared area. I think there is an opportunity to plant some vegetation in this area and this is important because I

1 believe if the road is constructed, all this vegetation you see on the right hand side will disappear and that will
2 really increase our view into the property so I think an opportunity to plant some vegetation here would be
3 reasonable. Here are some examples of fencing and sound barriers. In my discussion with Mr. Stewart, I was
4 trying to see if he would agree that this type of fencing may do a better job of addressing noise. Vinyl slats in a
5 chain link fence, I understand and I appreciate how it blocks the dog's views and I think that is a great way to go
6 but I think there may be opportunities for more fencing and sound barriers. My recommendation is that the board
7 continue the hearing and request that the applicant respond to questions and concerns including investigating an
8 alternate access, meet with neighbors to discuss issues and possible solutions and provide permits from Orange
9 County for solid waste, the acoustical analysis report, I think that has been presented. I think there are many
10 unanswered concerns before the board tonight. I think it would be reasonable and appropriate for the board to
11 continue the meeting to a future date in order for these issues to be addressed. I know the applicant did postpone
12 in order to work a little more on the access and resolving that. In light of that, this facility, once it is constructed
13 will be there for many years, I think a delay at this point is reasonable to answer these questions. Recognizing
14 that the board may determine otherwise to act and approve this request tonight, I am prepared to discuss a list of
15 additional conditions with respect to traffic, roadways, construction, noise, landscaping and wastewater. I know
16 you will consider my concerns and act accordingly. Thank you very much for your time and I am available to
17 answer any of your questions.

18 James Carter: This is a general question. I keep hearing about traffic. With his small kennel, would it require that
19 much traffic? I keep hearing traffic. Help me understand that.

20 Gene Poveromo: It depends. I do have something I would like to enter into the record from a traffic engineer and
21 it talks about traffic and if I may I will read it.

22 Nick Herman: I am not trying to obstruct but I object.

23 Gene Poveromo: I will not enter that information out of respect for your objection. Unless the board objects I am
24 going to enter this information into the record and unless the board objects, I would like to talk to you about traffic
25 as a professional planner, traffic impacts and I am speaking as a planner and as possibilities, so imagine, if you
26 will, I think what we heard was that this facility could also have grooming other than the kennel. I think I
27 understood it would be grooming that could occur on a daily basis so if I wanted to, without having a dog boarded
28 at the facility. I think I heard someone could come to the site and groom their dog so there is no limit to the
29 number of cars except for the number of groomers they may have on the site. There is nothing that, it's my
30 understanding that would prevent this from being a doggie daycare so there is nothing that would prohibit their
31 dogs first thing in the morning and then picking them up later in the evening. We are talking about 30 kennels and
32 dog runs so it has a maximum capacity of 30 so you could have a situation where 15 vehicles, half of the kennel,
33 arrive in the morning that is 15 trips, 15 vehicles leave later that day, that is 30 trips or after they drop their dog off.
34 You could have another 15 vehicles arriving in the evening, that is 45 trips and you could have 15 more trips
35 leaving when they pick up their dogs so there is a potential for having traffic.

36 James Carter: But this is based on your assumption, correct?

37 Gene Poveromo: It is based on looking at the potential of having occupancy for 30 dogs.

38 James Carter: You still haven't answered my question. In other words, you said based on potential, I am asking
39 this is your assumption? You assume things are going to happen. My God a constant flow of traffic, is this what
40 your assumption is?

41 Gene Poveromo: It is a concern I have and I don't think there is enough information tonight to give us a good
42 sense of the traffic impact so it is a concern.

43 James Carter: Thank you.

- 1 Mark Micol: Mr. Harvey, the current zoning is AR, is that correct?
- 2 Michael Harvey: That is correct.
- 3 Mark Micol: What is the acreage of the applicant's property?
- 4 Michael Harvey: 10 acres.
- 5 Mark Micol: Could he have a small farm on this property? Could he have horses, cattle?
- 6 Michael Harvey: Yes sir. The Orange County general statute does not permit Orange County Zoning to have
7 regulatory authority over farms.
- 8 Mark Micol: So without the special use permit he could have tractor trailers bringing cattle or picking up horses or
9 under the current zoning, right. He could have an increase in traffic in the current zoning if he had a farm.
- 10 Michael Harvey: If he is a bonifide farm, then yes, that could happen.
- 11 David Blankford: Do you have any professional certifications, like Mr. Harvey has behind his name?
12 Certifications?
- 13 Gene Poveromo: No, I do not.
- 14 Tom Brown: Mr. Poveromo, you showed us the page 1 of the permit denial from the Health Department, you are
15 aware on page 2 that the county specifically mentioned surface drip systems as options that would be approved
16 by the state?
- 17 Gene Poveromo: I believe I did read the back of the letter, I can't say I recall that.
- 18 Michael Harvey: Mr. Chairman, you are referring to page 120 of the abstract.
- 19 Gene Poveromo: I am aware there are other options that would be available.
- 20 Tom Brown: Any other questions.
- 21 Nick Herman: I think it is a question Mr. Harvey should clarify. The site plan literally had on it 16 runs. The
22 testimony is that it is the first phase but with a potential buildout to 30. Does that mean, should I be orally
23 amending the site plans to provide for that maximum?
- 24 Michael Harvey: At a certain level, you and your applicant have already done that indicating there is going to be a
25 30 run buildout here and I will state for the board's edification that I use the term canine. The definition says
26 animals. If there is a perceived limit then it is staff's use of terminology not necessarily the applicant because if
27 you refer back to attachment 1, there is no distinction on the types of animals that would be boarded or housed at
28 this facility. That is a staff distinction.
- 29 Nick Herman: You will get to this in a little while but your recommendations which appeared on page 140
30 something, on roadway, what you are proposing is that the county Fire Marshal make sure those roadway
31 modifications are appropriate, in other words, make sure you had 20 feet, as a condition to this SUP.
- 32 Michael Harvey: That is a correct statement.
- 33 Nick Herman: And that even on top of that there be NCDOT review in case they need anything else.

- 1 Michael Harvey: That is also a recommended suggested condition.
- 2 Nick Herman: As a condition. On the septic, the point is that you would not be able to engage in this use at all
3 unless DENR and the Orange County Environmental Health folks issue the requisite permits for an alternative
4 system, right?
- 5 Michael Harvey: That is correct.
- 6 Nick Herman: Assuming all those things was to happen then that would not be a violation of any of these
7 conditions, right?
- 8 Michael Harvey: Correct statement.
- 9 Nick Herman: Do you have exhibit's A, 1, 2 and 3?
- 10 Michael Harvey: Mr. Herman, you are referring to the various affidavits you have entered into the record as A1,
11 A2 and A3?
- 12 Nick Herman: Yes.
- 13 Tom Brown: Does the board have any questions at this time for Mr. Herman or Mr. Poveromo. Are there other
14 citizens that wish to provide testimony?
- 15 David Blankfard: I have a question. On page 104 of our handout, there was a preliminary floor plan that showed
16 the dog runs and the indoor kennels. Correct me if I am wrong, the outdoor kennels have CMU in between each
17 one and then there is just a fenced gate. The graphic here made it look like....
- 18 Thomas C. West: Fenced gate and there is another gate outside that and a six foot fence.
- 19 David Blankfard: The graphic made it look like the outdoor portion was separated by a chain link fence.
- 20 Michael Harvey: Mr. Blankfard, you were referring to the schematic that came in Mr. Vic Knight's Impact
21 Analysis?
- 22 David Blankfard: Yes.
- 23 Michael Harvey: Thank you.
- 24 Larry Wright: Since it was brought up on the 30 animals as opposed to the various versions that were presented.
25 I have a question for Mr. Stewart. Was your assessment on 30 animals?
- 26 Noral Stewart: I had initially assessed based on 16 and then it was brought to my attention there would be up to
27 30 animals.
- 28 Larry Wright: For the 30?
- 29 Noral Stewart: Yes.
- 30 Michael Harvey: I need to state one thing for the record. I know that Mr. West had provided me a letter from Mr.
31 Stewart and his firm but it unfortunately didn't make it into the packet. I accept the responsibility for that.
- 32 David Blankfard: Mr. Knight, when you said in your report that it was 100% buildout in the facility, was that for the
33 16 animals or the 30 animals.

1 Noral Stewart: Initially it was 16 animals in the site plan I had.

2 David Blankfard: Will it make a difference to your report if it was 30 or 16?

3 Noral Stewart: I have to base that on opinion this evening. My opinion initially would be no but without having
4 some further analysis it would be difficult to say that.

5 David Blankfard: The 30 animals, does that include 30 total animals, eight cats, 22 dogs or some variation of the
6 30.

7 Thomas C. West: It would be 30 dogs.

8 David Blankfard: What about the cats?

9 Thomas C. West: The cats would be inside.

10 David Blankfard: They would be in addition?

11 Thomas C. West: Yes.

12 Michael Harvey: Mr. Chairman, I have two more individuals that signed up to speak. Ms. Judy Von Wyk.

13 Tom Brown: Would you state your name and if you have been sworn in.

14 Judy Von Wyk: Yes, I have been sworn in and my name is Judy Von Wyk and I am Gene Poveromo's wife and I
15 also live at 4639 Old Greensboro Road. I am here to express, I very much agree with what he has said but I have
16 some very direct personal concerns about this kennel. I work at home and my work is a writer and a video editor
17 and requires prolonged periods of quiet and focus and that is one of the reasons we moved to where we are. I am
18 concerned about the traffic going right by our house to and from the kennel and if you have 30 dogs plus cats that
19 could potentially add up to quite a bit of traffic and I am also concerned about the noise of barking dogs. I know
20 you have noise mitigation at night but during the day, if you get a couple of dogs barking and there are also a lot
21 of dogs in the neighborhood. It tends to happen when you get a couple dogs barking it becomes, it is like pass
22 the Posey and I have a concern that they will start barking and that our own dog who has a hound dog bark will
23 respond and he will start barking and pretty sooner you have a concert of barking dogs in the neighborhood. That
24 is my real major concern and I am here to ask you help and I understand that this kennel may be well be
25 approved but if you do approve it I want you to please take into account these concerns and require the kennel be
26 designed to mitigate, not only at night but the impact of noise during the day and the impact of traffic and so forth.
27 Thank you very much.

28 Michael Harvey: Mr. Chairman, the final individual signed up to speak is Mr. Frank Williams.

29 Frank Williams: Before I get up I want to have a chance to give full disclosure. My dad is the one that owns the
30 property. My dad is 81 years old so I don't know if I would be entitled to speak but I wanted to say that.

31 Tom Brown: You are certainly entitled to speak. State you name and if you have been sworn in.

32 Frank Williams: My name is Frank Williams and I have been sworn in. I appreciate your time and I appreciate the
33 notification of this hearing today. Had it not been for Gene and the notification my father would not have known
34 about it. As we heard in previous testimony, he talked to all the neighbors and that was the one that had a
35 residential building and about half the distance to the kennel. The reason it was there was that I had mentioned to
36 my dad at some point that he needed to remove the residence that was there in order to put a traditional stick built
37 family residence there. Once we did that we were unable to get, as Mr. Abbott had testified, a traditional septic
38 system. That would have put the single family residence in less of half to all the neighbors. The other location

1 which is available because we have done an alternate site plan would be directly to the east so this home site is
2 directly to the south. They talk about the impact of the noise; the noise is the south and the north. The way the
3 land goes is, my dad's land is on a crest and drops into a low level and then goes back up to a crest which is the
4 West property so everything kind of drains towards my dad's property and also the sound carries from high point
5 to high point. The West's are probably there is no single family residence that my dad was renting there because
6 sometimes people can be noisier than dogs. At some point, he had residents that were less than model citizens
7 so I am sure you had the opportunity to hear discussions because I can actually hear them talk when they are on
8 their property. It is the way the noise carries. I am not opposed to it but whatever you decide it is going to impact
9 it and Mr. Carter was talking about the noise this and the traffic that. I don't think you can get down to specifics; it
10 is what your expectations are. What your expectations is when you go to the country. You go back to
11 kindergarten, where you saw a country scene with barnyard animals, chickens, cows, and that was your
12 expectations. You don't go to the country to hear several dogs. My dad, if he was here would say that all he
13 wants is the best and highest use for his property because right now my goal was to move out there and have a
14 house but if I want to move to the country, I want to be around traditional country sounds. I am not going to want
15 to be around dogs. It is great they have done all the sound things but you have to realize these dogs don't
16 automatically go into the house and stay there. Like when your dog gets out of a car, they are running around and
17 creating barking noise as well. I was just here to say that whatever decision you make will impact that area. It will
18 change it and whether that is for better or worse, that is a direction I will have to once we are making further
19 considerations for our property. That will change it. I do appreciate your time.

20 Tom Brown: Does the applicant have any further testimony?

21 Nick Herman: I have a few comments but not testimony.

22 Gene Poveromo: I do have some conditions if the board is interested in sharing them, I will share them with the
23 board and the applicant.

24 Tom Brown: Are those conditions written?

25 Gene Poveromo: Yes.

26 Tom Brown: Pass them out.

27 Michael Harvey: Mr. Poveromo, are you asking this be Poveromo Exhibit 4?

28 Gene Poveromo: I had it shown as Exhibit 6.

29 Tom Brown: We will consider these as we go forth for consideration.

30 Nick Herman: Remember this is a permitted use, I mean subject to obtaining a Special Use Permit. The good
31 news is that I don't think anyone objects to it but there are just some concerns and so the effort is to try to address
32 the concerns. Sometimes you have people say I don't want it at all and that doesn't seem to be the case here.
33 Be careful what powers you have. You have your own lawyer here. I mean you are not in a position to reform
34 maintenance agreements that are filed with the Orange County Register of Deeds. This whole business about the
35 road in accordance with your ordinance, that road issue is designed to be taken care of by conditions that Michael
36 Harvey will talk to you about, all of which we have agreed to. I would be careful about trying to reform
37 maintenance agreements but while I am at it, the last amendment to this maintenance agreement shows the
38 people who signed it, all the people who signed it but one are people who signed Exhibits A1, A2, A3 agreeing
39 with this. The very people who are party to the maintenance with the exception of one are people who signed
40 these affidavits and letters of support. Another observation, what was useful about Gene's presentation is that it
41 does show that his beautiful house has an extraordinary amount of foliage and buffering going on there, if you
42 look at that. Even on his side, this is a heavily wooded area and when you turn that corner, there is a whole

1 clump of trees buffering this facility that is much further removed from that by hundreds of feet. One other
2 comment, this is something I picked up on, something Mr. Carter said, I understand the fear here, these are
3 commercial vehicles, 18 wheelers are not going down here, even farm trucks or tractors. What is happening is
4 that, I live in Chapel Hill but if I lived here, I might take my dog to get groomed at his place. We are talking about
5 cars, not commercial vehicles. That is not what that is being used for. Finally, I just don't want this application to
6 get hung up about the septic requirement. There is no question what has to be provided for but these folks are
7 borrowing off their life savings from the VA in order to do this and they are just not going to go through a drip
8 system and what you need to do in order to get approval from the state about that and spend that money in
9 advance of knowing whether they have a special use permit. If you issue a special use permit, it will only be good
10 if they untimely get that drip system but that is the time for them to have to spend the money to go through those
11 bureaucratic hurdles in order to have that system approved. Finally this, one thing that will help some of the fears
12 is Noral Stewart, he does this for a living for many, many years in terms of trying to deal with acoustical abatement
13 and according to him, it was smart of them to bring him on board and have him involved with the design of this so
14 this facility could be constructed in a way that would minimize any impact. I suggest there are a whole slew of
15 kinds of conditions that Gene is proposing which presumably might address that by limiting hours and all that kind
16 of thing but the expert that we drew upon in order to try to mitigate these kinds of impacts comes from him and the
17 actual construction of the facility. At least from our standpoint, we had hoped that would be sufficient unless you
18 would tell us otherwise we need more which you have not told us to do.

19 Tom Brown: Mr. Herman, did you have a chance to go through this maintenance agreement previously?

20 Nick Herman: No. I looked at it while we were here. I am very familiar with it, I looked at it.

21 Tom Brown: I'll address that further with Mr. Harvey but we will continue on. Does the board have any further
22 questions?

23 Larry Wright: I would like to ask counsel, as you know of page 47 of this application, it refers to the
24 Comprehensive Plan and in order for us to approve this, and we have to show that it does conform to the
25 Comprehensive Plan. I have worked on the Comprehensive Plan, the 2030 Comprehensive Plan and I don't want
26 to go into a lot of discussion but have you looked at the Comprehensive Plan and usually representation here
27 does state point blank that we have had applicants that have done this and say this application conforms to the
28 Comprehensive Plan here, here and here. Are you prepared to do that?

29 Nick Herman: Well, the reason I didn't address that was the conformity with the Comprehensive Plan is
30 addressed in Mr. Harvey's remarks.

31 Larry Wright: I know but when we make a recommendation we like to be specific.

32 Nick Herman: Our position is that we adopt the reasoning of the planning staff in terms of the conformity with the
33 Comprehensive Plan.

34 Larry Wright: So you haven't really ...

35 Nick Herman: That is the only reason I didn't address it.

36 Tom Brown: Since we have completed the public testimony, I would like to give staff the opportunity to provide
37 any input you have up to this point but specifically do you have anything to say about road maintenance
38 agreement, and then I will go to the staff attorney because I have a concern that while we don't dictate what the
39 law says, we don't want to aide in proliferating a use that is not the owner of that property so there is a
40 maintenance agreement in effect so I would like to think about what impact that has and Mr. Harvey if you have
41 comments on that in addition to the comments you have.

1 Michael Harvey: I have several comments I feel obligated to make. We may as well start with the road
2 maintenance agreement and go from there. The existing road maintenance agreement requires that the road, as
3 Mr. Poveromo has testified to and Mr. Herman has alluded to, that the road has to be maintained to a 16 foot wide
4 gravel road passable in all weather conditions and I am quoting from Article 3. My testimony being out there is
5 there are several spaces that don't meet 16 feet which from my standpoint is immaterial. That is for the property
6 owners to deal with, not the county. The county does not enforce road maintenance agreements because they
7 are agreements to enter in by private parties. We have a minimum standard that would be required. This would
8 exceed that minimum standard. Now we have testimony from the applicant indicating that he would maintain the
9 road to the 20 foot as required by the Fire Marshal. I am assuming the question you are asking does this any way
10 invalidate the road maintenance agreement and my answer to that would be the road maintenance agreement on
11 its face still exists. Mr. West, the approval of the special use permit, however, is volunteering to maintain the road
12 to a higher standard than the minimum requirement for the road maintenance agreement. That will be binding on
13 him because that has been his testimony that is what he will do. So in effect you will have a road that far exceeds
14 what this road maintenance agreement suggested is done in the first place.

15 Tom Brown: So the staff position would be that the prorated share of maintaining the road would be immaterial.

16 Michael Harvey: That is my quick reading of it, yes sir. Based on the testimony of the applicant.

17 Sahana Ayer: I have to agree with Michael. The Fire Marshal's condition that the road will be maintained to a 20
18 foot gravel road should cover most of the concerns and the fact that Mr. West has voluntarily agreed to maintain it
19 to a higher standard. I haven't had a chance to review the road maintenance agreement so I can't comment on
20 what is in that document but the Fire Marshal's condition should trump that and I think although the board can edit
21 the document and extract information from that document, it can enforce conditions on how the road should be
22 maintained. To that extent, the board has the power to enforce...

23 Tom Brown: Okay, thank you. Any other comments?

24 Michael Harvey: I feel obligated to do some house cleaning to Attachment 4, which is the findings of fact sheet.
25 To address a concern referenced by Dr. Wright with respect to landscaping, I went out to the property earlier this
26 evening and verified the location of required landscaping. If I can call your attention to the plat before you this
27 evening, specifically number 8 under General Notes, the applicant has indicated that per Article 12 *Landscaping*
28 of the Ordinance, he will maintain a Type B Landscape buffer. I would suggest to the board since the applicant
29 has essentially included that condition on the plat that we say the final Landscape Plan shall be prepared
30 consistent with the existing land use regulations and condition detailed on the plat. In fact I would say the existing
31 language on the plat, specifically General Notes 8 and 9, address Dr. Wright's concerns. If he feels this doesn't
32 adequately address that planted trees shall be local, deciduous, non-evasive species, and be drought tolerate a
33 specific condition can be offered. The second comment I want to offer is there has been testimony concerning
34 noise regulation. For the board's edification, the Orange County Noise Ordinance is enforced by the Orange
35 County Sheriff's Department. It is not a planning document. It is not enforced by the Orange County Planning
36 Staff. What has been testified to this evening is consistent with the parameters of that ordinance with respect to
37 decibel levels and limits. This ordinance was amended in 2005 to include revised terminations or criteria for
38 determining what constitutes a violation. The acoustical consultant is correct, there are exemptions. I am willing
39 to testify at this point and time that dog barking ain't one of them. I think Mr. Chairman, as we move forward, we
40 are looking at another condition, that the site plan, if the board chooses to approve this, the site plan be modified
41 to include the correct number of animals to be boarded. We have heard up to 30 canines and that is the number
42 of runs shown. I am looking at the applicant to make sure I am getting it right. The site plan says 16 and we know
43 that is a holdover from one of the original applications so if it is your decision to approve, I would recommend that
44 as a condition that prior to, I would say within 60 days, the site plan be modified to change that number to the
45 appropriate number.

46 Larry Wright: Animals is cats and dogs? Am I permitted to ask that question?

1

2 Michael Harvey: I think you need to direct that to the applicant because right now, what is being shown is 30 runs
3 for 30 dogs and then the comment made by the applicant is there will be felines being boarded as well. I think
4 your question is best directed to them at this stage.

5 Larry Wright: So we're...

6 Tom Brown: Before we go there, I want Mr. Harvey to make sure that I get the interpretation on the Class II
7 kennel which says animals. It doesn't say felines or canines. It says animals.

8 Michael Harvey: I will freely admit when I insert canines, that is what I am used to.

9 Tom Brown: My point is that you can't have 30 dogs and 30 cats, that's 60 animals.

10 Michael Harvey: If you look at the definition of a Class II kennel as defined within article 22 to the ordinance... I
11 should state, this will be the same definition as contained within the Unified Development Ordinance. "An
12 establishment involving animals of any species, excluding domesticated livestock, engaged in any following: a)
13 owning or keeping for any purpose, 20 or more animals." Let's stop there, if Chairman has 21 dogs or 21 cats, he,
14 by default has to get a Class II kennel permit. b) selling and/or training guard dogs or security dogs. I think that is
15 self evident. There is actually no number there. If you are training or selling security dogs, you have to get a
16 Class II kennel permit. c) keeping more than five (5) animals at any given time for the purpose of breeding,
17 boarding, or rehabilitation. If you have more than five animals and you are engaged in breeding, boarding or
18 rehab you have to get a Class II kennel permit. There is actually no cap established by this definition for the
19 number of animals. What the applicant is proposing is to limit it to 30 dogs and there will also be felines boarded
20 at this facility. I think Dr. Wright's question was what is the cap in terms of amending the site plan. I would dare
21 say that is open to the applicant not the staff to suggest but I am going to recommend a condition be imposed
22 ascribing that the revised site plan establish that limit.

23 Tom Brown: Of cats and dogs or animals?

24 Michael Harvey: Animals.

25 Tom Brown: Total animals.

26 Michael Harvey: Correct.

27 Tom Brown: Is that the kennel where you were going?

28 Nick Herman: I ask a question, so what he proposes is to put a cap on 30 dogs and five (5) cats. I don't want to
29 get this wrong. 30 dogs and no more than five (5) cats.

30 Michael Harvey: Mr. Chairman, based on what we just heard, if you all find it that you can approve with this
31 application, the site plan needs to be modified to include that information and the SUP needs to be modified to
32 contain that specifically.

33 Tom Brown: 30 dogs.

34 Nick Herman: Maximum 30 dogs and maximum of five (5) cats.

35 Tom Brown: If we get to that point then that will be a condition that we would discuss.

36 Nick Herman: Exactly.

1

2 Michael Harvey: Mr. Chairman, unless there are any other questions by the board members, the applicant or
3 anyone else, I would like to go through Attachment 4.

4 Larry Wright: Michael, I hate to say this but you were talking in terms of the landscape and you said mirror 8 and
5 9, what is 8 and 9?

6 Michael Harvey: General notes on the site plan first page, 8 and 9. My only comment was that if you believe
7 those two notes satisfy your concern regarding the landscape plan then the site plan, if approved by this board,
8 will dictate the development of the site as well as all conditions. You could conceivably just state that a landscape
9 plan will be submitted consistent with the notes on the site plan or if you can actually, if you want to get specific, I
10 would recommend that you ask that numbers 8 and 9 be combined into a condition if you are so inclined.

11 Tom Brown: Before we get started, Mr. Herman, we did not hear any discussion on hours of operation at all. Was
12 there any intent of stating hours of operation of the kennel?

13 Nick Herman: You are right that there was no discussion. Let me throw something out so he can respond to it.
14 Let's take what Gene said, when people come and deliver a dog and pickup, what if you limit it. If you came not
15 earlier than 7:00 AM and not later than 7:00PM in the evening. Yes, you could have a problem with that. That
16 would prevent someone from driving someone to pick up a dog at 7:15 PM or 6:45 AM. He doesn't seem to have
17 a problem with the 7:00 AM to 7:00 PM time.

18 Tom Brown: I was looking at Mr. Poveromo.

19 Nick Herman: He may have suggested that.

20 Tom Brown: He was looking at 8:00 AM to 5:00 PM like standard hours. I think that is something, we as a board,
21 would need to think about going forward. It is not a blanket 24 hour a day operation.

22 Nick Herman: Exactly.

23 Tom Brown: There needs to be some restriction.

24 Nick Herman: We would propose that, I mean, 5:00 PM makes sense with one exception. Some people get off
25 work at 5:00 PM so that is difficult so if you do 7:00 AM to 7:00 PM that is to accommodate someone like me who
26 works like you guys.

27 Michael Harvey: I am going to call your attention to Attachment 4 beginning on page 135. As a reminder to the
28 board, staff will quickly go through how it reached its decision and the evidence, then I will address a comment I
29 made at the onset of this meeting concerning the site plan. Without further ado, I will pause to make sure there
30 are no questions and obviously I would suggest that once I complete my assessment and discuss conditions, that
31 we pause and allow the applicant and any other party to address the board and have that opportunity.

32 Beginning on page 136, I am required to make a finding that the applicant has complied with the provisions of 8.6
33 and 8.8 concerning the submittal of the application for a Class B Special Use permit. Specifically that the
34 application was submitted on the appropriate form as required by 8.6. Section 8.8a, that 10 copies of the site plan
35 were prepared by a registered land surveyor. 8.8b, that elevations for the proposed structure were provided.
36 8.8c, that ten copies of the Environmental Assessment and Environmental Statement if required are submitted.
37 8.8d that a fee was paid. Mr. Chairman, I have made an affirmative finding in Section 8.6 that the applicant did
38 complete an application on the appropriate form as required by the ordinance, that he did submit the 10 copies of
39 the site plan prepared by Summit Engineering as required by 8.8a. That the site plan did contain elevations of the

1 proposed structures as required by 8.8b. You will see that I have determined that this property does not require
2 by the Orange County Environmental Impact Ordinance to submit an environmental assessment and/or an
3 environmental impact statement as it does not exceed the minimum land disturbance area required so we are
4 making a finding of non-applicable. Under 8.8d, that Mr. West paid the appropriate fee. Anyone have any
5 questions on the finding on page 136?

6 Beginning on page 137, the Orange County staff is required to make findings with the specific impact or focus on
7 whether or not the project complies with the dimensional requirements as contained within article 5 of the Orange
8 County Zoning Ordinance. Specifically, Article 5.1.2 that there is a minimum lot area for this use of 40,000 square
9 feet. There is a minimum lot width of 150 feet. That there is a required front yard setback of 40 feet met by this
10 proposal. That there is a required rear and side setback of 20 feet met this as required for this proposal and there
11 is a maximum building height of 25 feet as required by this proposal. You will note, I have made a confirmative
12 finding of all sections indicated. The property is 10 acres in area which is way over 40,000 square feet. The lot
13 has over 900 feet of frontage along the access easement providing ingress and egress to Old Greensboro
14 Highway and based on the provisions of the code as defined, that meets the minimum lot width requirement. That
15 the proposed boarding facility is approximately 185 square feet from the front property line which meets the
16 requirement of the from yard setback of 40 feet. That the proposed boarding facility is approximately 210 feet
17 from the southern property line, 650 feet from the northern property line and 210 feet from the rear property line
18 and the proposed facility as submitted shows on the elevations provided in the site plan that it complies with the
19 maximum height of 25 feet. All that information is derived from the site plan you have before you this evening.
20 Any questions? Seeing none.

21 Beginning on page 138, compliance with the land use intensity requirements as articulated within Article 6,
22 Section 6.12. You will note that staff has determined the minimum gross land area and the maximum gross land
23 area for subsections a and b of Section 6.12 are not applicable as contained within the current Orange County
24 Zoning Ordinance. From the site plan, staff has been able to determine that the project complies with the
25 maximum floor area ratio 38,000 square feet allowed on this property. That the site plan provides sufficient
26 documentation to prove that the proposed project meets the minimum open space ratio requirement of 365,940
27 square feet and that as defined by the ordinance, the site plan provides sufficient documentation to prove that the
28 proposed project meets the minimum pedestrian landscape ratio of 91,476 feet. You will note we have made an
29 affirmative finding on all those sections based on the information on the site plan. Are there any questions?

30 Beginning on page 140, we start looking at specific findings of fact with respect to the special use permit focusing
31 on specifically on Article 8, Section 8.2.4a, the method and adequacy of provision for sewage disposal facilities,
32 solid waste and water service. You will note the staff has not made a check mark, why? Because I cannot make
33 an affirmative because the permit has been denied by Orange County Health Department but the applicant has
34 suggested and ask and what staff is willing to abide by is that a condition be imposed and that condition states
35 that the applicant must secure a permit from the state to develop a septic system on his property to support this
36 facility. The Chair has asked before the meeting if we could amend that condition to include a statement prior to
37 land disturbing activity. Staff left that off that was the intent. Staff cannot make an affirmative finding. Now does
38 that create a problem for staff, unfortunately, all I can tell you is that I see both sides of this argument. I have
39 talked with the Orange County Health Department, with the state, we have in the past made such conditions part
40 of an approval. Most notably with Mr. Dickinson, that he obtain a permit for his camp retreat center. That he
41 obtains a permit for an operating septic system from the state as a local health department was unable to do so. I
42 believe that the condition satisfies the requirement of Section 8.2.4a and if Mr. West is unable to secure his
43 permit, he will not be building this facility. Method and adequacy of police, fire and rescue squad protection. As
44 you know we have made an affirmative finding based on the correspondence from the sheriff's department and
45 fire department. There are relative conditions imposed or recommended to be imposed as part of that. The
46 method and adequacy of vehicular to the site and traffic conditions. As we have talked about on numerous other
47 occasions, the NCDOT will have to review this plan. They unfortunately do not review plans without an approved
48 site plan so we have recommended that a condition be imposed as we do on several others that a permit, if

1 required, will have to be issued by DOT. Staff has made an affirmative finding also based on the fire department's
2 and sheriff's department testimony as contained within the packet. Are there any questions?

3 Beginning on page 142, this gets to the specific standards for the kennel operation as detailed within Section
4 8.8.11. First that the plans for all kennels, barns, exercise yards, riding arenas, pens and related improvement,
5 including signage. The submitted site plan contains all the required information. The site plan showing the
6 improvements listed in the above are the structures on the same lot, yes it does. The site is of adequate size to
7 protect adjacent properties from adverse effects of the kennel or riding stable or academy. Staff has made an
8 affirmative finding. Section 8.8.11.2, no part of any building, structure, runway or riding arena, in which animals
9 are housed shall be closer than 150 feet from the property line. The site plan provides documentation and
10 evidence that it meets this requirement. Any kennel which is not wholly enclosed within a building shall be
11 enclosed by a security fence at least 6 feet in height. The site plan states it will be 6 foot high fence enclosing the
12 outdoor runs. The site plan show parking, access areas and screening devices for buildings and animal boarding
13 facilities. The site plan does contain that information. The site plan shall be reviewed by the Orange County
14 Animal Control Department and found in conformance. The Animal Control will not issue their approval without
15 seeing the building permit application and floor plan so we would recommend a condition. This is consistent with
16 other kennel operations because they need not only an approved site plan but they need to have building plans
17 submitted to the building inspections department and ascertained that it meets building code before they issue an
18 approval. Part of that is so they don't take Mr. West's money upfront and then have to deny it because the
19 building inspections department might deny it or staff might deny it.

20 Larry Wright: On the Orange County Animal Control, aren't there related permits, I think from the USDA as
21 codified in 8.8.11.2c and 8.8.11.3 of the Zoning Ordinance, where the USDA also has to have an additional
22 permit?

23 Michael Harvey: It does say which may be required by the USDA or Wildlife Resources Commission. Where
24 required by the Animal Control Ordinance that a Class II permit shall be obtained by the Department of Animal
25 Control within the first 30 days of occupancy. Failure to obtain and maintain a valid Class II kennel Permit or other
26 related permits which may be required by the USDA. This actually doesn't require us to submit anything but
27 requires Mr. West to get any and all necessary permits and that is part of the condition.

28 Larry Wright: That would be the Animal Control would then Okay.

29 Michael Harvey: That is one of the conditions, he has to get it because he has to build it then get the occupancy.
30 That is why we recommended that condition.

31 Larry Wright: The USDA is on that, their standards?

32 Michael Harvey: If he has to get the permit, yes.

33 Beginning on page 144, the applicant has indicated where signs can go. We are recommending a condition that
34 full rendering be provided. Larry, I think this is your exact question on page 144, Section 8.8.11.3. It is written
35 that the applicant indicated that they will get this; this is an approval, a condition of approval that he gets all
36 necessary permits. If USDA or Wildlife Resources Commission applies then he has to get them too. Any
37 questions?

38 On page 145, There are the 3 (three) findings and staff is not obligated and cannot make recommendations for
39 because they are directly based on the testimony that has been submitted. Specifically, that the use will maintain
40 or promote the public health, safety and general welfare. That the use will maintain or enhance the value of
41 contiguous property. The location and character of the use, if developed according to the plan submitted, will be
42 in harmony with the area in which it is to be located and the use is in compliance with the general plan for the
43 physical development of the County as embodied in the Comprehensive Plan. You will make those findings

1 based on the testimony you have heard this evening whether it be from staff, the applicant or those in the
2 audience. Staff does not make recommendations on those.

3 On page 148, if it is your decision to approve, I have got 8 (eight) conditions listed. Those conditions are that the
4 applicant get a building permit and all the other permits as required by 8.8.11.3, that the Orange County Fire
5 Marshal's office review and approve the building plans as part of the normal building permit review process, that
6 the Orange County Fire Marshal inspect the roadway modifications to determine if they are consistent with the
7 approved site plan and provide approval, that the applicant submit the formal application in order to obtain the
8 necessary septic permit, that the applicant shall supply to the planning department, Orange County Environmental
9 Health with a permit approved from the state indicating the type of system approved for the site, for the applicant
10 to supply the planning department, Environmental Health staff inspections report from the state indicating the
11 system has been inspected and can be used for the proposed kennel prior to the commencement of operations.
12 The applicant completes, submits and receive approval of a Class II kennel from the Orange County Animal
13 Control Department, that the applicant submit a sign rendering, that the applicant submit the approved site plan
14 for DOT for review in the event that it is determined that the applicant is required to apply for and receive a
15 driveway permit, they will do so at that time. Those are the general conditions we are recommending. I would
16 also recommend the board to consider the following additions to that list. These are in no particular. That a
17 condition is imposed and the applicant has agreed that the site plan be modified, specifically number 1, to include
18 the maximum number of dogs and cats that will be boarded or housed in this facility. I recommended this be done
19 in the next 60 days. I will leave this with Dr. Wright. Dr. Wright brought up a concern about the landscaping. I
20 believe that notes 8 and 9 address that concern. If Dr. Wright so inclined, staff will not be opposed to a condition
21 being added that landscaping be installed consistent with the language contained and notating that on the site
22 plan. Condition 11 that the acoustical analysis that has been provided but was not entered into evidence by this
23 board be included as part of the site plan review and approval by staff and become part of the record of the site
24 plan and building approval. I am hesitating to bring this one up. Hours of operation, the board needs to determine
25 if they want to include a condition dealing the hours of operation. That suggested by the applicant from 7 AM to 7
26 PM with no arrivals prior to 7 AM and no pickups or arrivals after 7 PM in the evening. I would also suggest, the
27 applicant has testified to this, and Mr. Herman can certainly respond in a moment that the special use permit
28 indicates that the applicant accepts the responsibility of maintaining the road which is 20 foot wide width. As a
29 requirement, the Fire Marshal, has agreed to. That is all I have.

30 Tom Brown: Mr. Herman, if we get into the discussion of hours of operation, would it also be prudent to add the
31 wording from 7 AM to 7 PM and also the outdoor runs would not be used except during those hours.

32 Nick Herman: Yes.

33 Tom Brown: It would be the same thing, hours of operation and hours of use of the runs.

34 Nick Herman: It is helpful for you to know there is no objection at all so there is no down side to doing it.

35 Tom Brown: I want to be clear because when I close the public hearing, we will not be able to talk.

36 Larry Wright: Michael, on page 47, you said this conforms to the Comprehensive Plan, this is one of the elements
37 we must consider in the approval process, can you make a little of testimony on that we can use. It is stated that
38 it does, do you have some language for that?

39 Michael Harvey: Without putting words in the board's mouth, on page 47 of the abstract, what staff has done is
40 offer its opinion on whether or not this particular proposal complies with the standards in the Comprehensive Plan.
41 In our determination, with respect to the definition of Agricultural Residential Land Use category, we believe that
42 this proposal is consistent with this definition and it is also consistent with Land Use Goal 3 and Objective LU 1.1,
43 encouraging land uses that are consistent with rural lifestyles. We have indicated in here that we believe that this
44 land use based on the surrounding land uses but in the overall encompassing goal of the Agricultural Land Use

1 category, this is consistent with those various goals and definitions. Dr. Wright, we have also indicated with
2 respect to compliance of Section 5.6 Land Use Overreaching goal, that the proposed use is located on a parcel of
3 property of sufficient size to be self sustaining from a service provision perspective and is in an area where other
4 non-residential developments are located. The proposed development preserves extensive natural foliage
5 through encouraging more restrictive buffer that normally would not be part of the ordinance will not involve the
6 mass grading of the property to support the proposed project. Mr. Chairman, if there is nothing for staff, I know
7 Mr. Herman has already asked, but as we always do at the closing of our presentation, we formally ask the board
8 to recognize that the abstract be included verbatim in the minutes as staff attachment. We also ask that you
9 accept and include with the Director, a copy of the Orange County Zoning Ordinance as it currently exists to take
10 the date of the application and submit it into the record.

11 Tom Brown: One thing, Mr. Harvey, when you were talking about conditions, did you mention the Fire Marshall
12 approval of any site altered access to the property?

13 Michael Harvey: That is condition number 3 that the Orange County Fire Marshal's office inspect the road
14 modifications and certify that they are consistent with the approved site plan and emergency vehicle access will
15 be possible prior to use.

16 Tom Brown: So that would include any site alterations?

17 Michael Harvey: Correct. Consistent with the approved site plan, the site plan contains the note dealing with the
18 relocation of the road to address.

19 David Blankfard: I have a question for Mr. Knight. You stated that your report was based on 16 dogs and that the
20 report might change based on it now being 30 dogs. What kind of change are we talking about? The reason I am
21 asking is that Article 8.2.1 Section 2, one of the main things we had to base that part on was your report so I have
22 concerns about whether we can hang our hat on the report to say based on the number of animals that are inside
23 the kennel.

24 Vic Knight: First of all, I wouldn't know what it could or wouldn't change it. Based on the report, the site plan I
25 was given to begin with, I believe there is a discussion specific about the number of animals but more about the
26 building and its use as far as my analysis. In theory, there is not much reason to change because of that but I
27 haven't sat down to look at it from a standpoint to say that from a factual that it would change. I have only looked
28 at what I have looked at.

29 David Blankfard: The building materials are the same between what is proposed here and what is in your report
30 at the time you were given it?

31 Vic Knight: Everything I have heard this evening was the step up in acoustical redesigns and incorporation of
32 those concepts.

33 David Blankfard: I think the finishes are the same; the roof type is the same construction.

34 Tom Brown: Any other comments or questions?

35 Gene Poveromo: I would like to talk a little about and explain the justification. On number 2, we were interested
36 in limiting the hours of operation so we would have some anticipation of when traffic might occur. What I have
37 seen looking at other kennels is they open from 8 AM until 11 AM and then open up again from 5 PM to 6 PM.
38 Some kennels are not open all day long. Some kennels are closed on specific days, (Tuesdays and Sundays).
39 That was the intent of that one. That is why it says 30 hours during the week to try to get a very specific window
40 of when vehicles would be arriving and leaving so we would have some expectation that we are not going to see
41 any traffic during a certain time period. The construction, number 3, giving us all an understanding of what the

1 road would look like. Number 4 is pretty obvious; I explained that during my PowerPoint. You have talked about
2 maintenance. You talked limiting the number of animals. We talked about the outdoor runs. The idea of having
3 the owner or operator reside on the premises as I know this applicant is doing but if they sell the property. Can
4 they sell the property and have someone else Thank you for clarifying that.

5 Tom Brown: Mr. Harvey can give you staff's opinion but as far as our knowledge, it does not run with the
6 property.

7 Michael Harvey: Special Use permits run with the property.

8 Tom Brown: I am mistaken.

9 Michael Harvey: However the applicant's testimony is that they will be residing there to maintain it and take care
10 of the animals.

11 Tom Brown: Could you clarify that and say that the SUP does run with the property but if you sell it that special
12 use permit does not go with the new owner.

13 Michael Harvey: The special use permit like any other permit on any parcel of property goes from new owner to
14 new owner to new owner so if Mr. West sells me the property, I could operate a kennel.

15 Mark Micol: Is there a timeframe.

16 Michael Harvey: The ordinance establishes a timeline and one of the reasons we don't include it is if you note
17 from the SUP they are required and obligated to maintain compliance with the applicable standards with the
18 Orange County Zoning and Subdivision Ordinance. If a special use permit as defined within the ordinance says if
19 a special use ceases for 12 months it could not be re-established without coming back through this process.

20 Tom Brown: I am sorry, the hour is getting late.

21 Gene Poveromo: I guess the concern I have is there is some advantage to having the person who operates the
22 kennel to live on site because they maintain it, if there is a concern with noise, we can go over and talk to them. I
23 don't think there is anything that would prohibit them from, after getting the permit, selling their property and I
24 could live in the house and have someone else operate the kennel who doesn't reside on the property so that is a
25 concern. Again, the advantage of having the owner/operator live on the property is there will be more control over
26 what goes on and a lot easier to get in touch with the person so that is why number 8 was there. We talked about
27 fencing. We talked about landscape buffers. I would like to ask Michael if the site plan showing the septic system
28 in the location shown, if they need to approve it in a different location, is that modification of the special use permit
29 that comes back to this board? If it is not, I would like to see a condition that specifies that it be located there on
30 that property. I have a concern that they cannot get approval and they will put a septic system that is in the upper
31 northeast corner of the property which is adjacent to the back of our site. I like where it is being proposed, I would
32 like to see it go there.

33 Michael Harvey: According 8.7.1 of the Orange County Zoning Ordinance and I will also stipulate again, and I
34 know it is getting late, but I want to make sure it is on the record, this is the same language detailed with in the
35 proposed special use permit. Any change in the location of existing infrastructure including water, septic and
36 storm water drainage facilities which would provide a different level of service would constitute a modification
37 necessitating this Board's approval. If the septic area is moved on the property, if the applicant takes down
38 existing designated open space, or removes existing open space, as shown on the plat which you are approving,
39 in my mind that is a modification and would have to come back before the board.

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1 Gene Poveromo: It sounds like a condition under which a modification would be required would be a situation that
2 requires a different level of service. I don't understand.

3 Michael Harvey: There are 10 criteria used to determine whether or not something is a modification or a minor
4 change.

5 Gene Poveromo: Michael is saying for the record that relocating of this facility would constitute a modification that
6 would require coming back to this board. That is what I would like to clarify.

7 Michael Harvey: I believe it would require the board to relocate it again because I think actually it is inconsistent
8 with several of the criteria listed herein.

9 Gene Poveromo: Thank you very much for the opportunity to speak again.

10 Mark Micol: Who enforces the hours of operation, your office?

11 Michael Harvey: As it is part of the special use permit, yes sir, we would have to enforce that standard.

12 Frank Williams: What is the penalty for a violation?

13 Michael Harvey: The honest answer to that question is under the provisions of Article 8 violation of any provision
14 of the special use permit can lead to revocation of the permit. There is a process I have to go through but it can
15 lead to revocation. Which means Mr. West would have to cease operations until ...

16 Frank Williams: It's fixed.

17 Michael Harvey: I wouldn't make the argument that he would have to come back before the board if this issue
18 gets revoked. I don't have the power to re-establish an SUP.

19 Tom Brown: Mr. Herman, would you have a comment on, if the owner/operator resides on the property?

20 Nick Herman: They have no objection.

21 Michael Harvey: Mr. Chairman, to keep things equal, if that is the case that would be a potential condition number
22 14.

23 Tom Brown: We are on the cusp of closing the public testimony portion so if you have any further questions,
24 make them now. The public hearing portion of Case A-6-10, Class II Kennel, Canine Boarding Facility is now
25 closed. I would like to thank the staff, the applicant and the citizens for their substantial time and patience through
26 this process. We have heard testimony from staff and other concerned parties. The applicant has requested a
27 special use permit to operate a Class II Kennel, Canine Boarding Facility. The testimony and evidence has been
28 provided to this body. It is time at this point to discuss, comment or make our way towards our findings. I would
29 propose, we can discuss ahead of time but we can address the specific findings first which begin on page 136.
30 Once we go through the specific findings, when we get to page 140 on the method and adequacy of sewage
31 disposal, that particular finding, if it is a yes, we will need to add a condition. We will do the specific findings first,
32 then we will go to the general findings on page 145 and finally if we have gotten through all those and the votes
33 indicate we need to do so, we will then discuss the conditions and then have a motion of approval of the
34 conditions. Is there any discussion or you ready to proceed?

**FINDINGS OF THE ORANGE COUNTY PLANNING STAFF
PERTAINING TO REQUEST SUBMITTED BY THOMAS AND DELOIS WEST
REQUESTING A CLASS B SPECIAL USE PERMIT TO ALLOW FOR A
CLASS II KENNEL – CANINE BOARDING FACILITY
FOR A PARCEL OF PROPERTY LOCATED AT
4645 OLD GREENSBORO HIGHWAY (PIN 9748-11-2864)**

Special Uses must comply with general and specific standards as set forth in Article 8.

Article 8.2.1 b) requires written findings certifying compliance with the following:

- (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;
- (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and
- (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners;

In addition, the Board shall make findings certifying that the application is compliant with the following specific standards:

- (1) Specific standards for the submission of Special Use Permit applications as outlined within Section(s) 8.6 and 8.8 of the Ordinance,
- (2) Applicable provisions of Article 5 (Dimensional Requirements) and Article 6 (Application of Dimensional Requirements) of the Ordinance.
- (3) Section 8.2.4 relating to the method and adequacy of the provision of:
 - a. Sewage disposal facilities,
 - b. The adequacy of police, fire, and rescue squad protection, and
 - c. The adequacy of vehicular access to the site and traffic conditions around the site,
 - d. Other use specific standards are set forth in Section 8.8
- (4) Specific regulations governing the development of individual Special Uses as set forth in Article 8.8, specifically Section 8.8.11 *Kennels or Riding Stables/Academies* of the Ordinance

Listed below are the findings of the Orange County Planning Department regarding the application in question. The findings have been presented by Article and requirement to assist the Board of Adjustment in its deliberations.

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ARTICLE 8.6 AND 8.8 - APPLICATION COMPONENTS ("Yes" indicates compliance; "No" indicates non-compliance)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<u>Ordinance Requirements</u>			
8.6 - Application submitted on forms providing full and accurate description of proposed use, including location, appearance and operational characteristics.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A complete application on appropriate forms has been submitted.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8.8 a) - Ten (10) copies of the site plan prepared by a registered land surveyor, architect, or engineer.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Ten (10) copies of the site plan, prepared by Summit Engineers were submitted	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8.8 b) - Elevations of all proposed structures to be used in the development.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Proposed structures are shown on the site plan. The application contains renderings of the proposed buildings	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8.8 c) - Ten (10) copies of the Environmental Assessment and/or Environmental Impact Statement, if required, by the Orange County Environmental Impact Ordinance.	Not applicable – An EIS statement is not required by the Orange County Environmental Impact Ordinance as the proposed amount of land disturbance is under the minimum amount necessary to warrant an EIS statement	Not applicable – An EIS statement is not required by the Orange County Environmental Impact Ordinance as the proposed amount of disturbance is under the minimum amount necessary to warrant an EIS statement	<input checked="" type="checkbox"/> Not Applicable
8.8 d) - A fee, as set by the Orange County Board of Commissioners.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The application fee has been paid.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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Motion made by Dawn Brezina that the findings of fact by counsel for Article 8.6 and 8.8, 8.8a, 8.8b, 8.8c and 8.8d found in the affirmative. Seconded David Blankfard.
Vote: Unanimous

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ARTICLE 5 - DIMENSIONAL REQUIREMENTS ("Yes" indicates compliance; "No" indicates non-compliance)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<u>Ordinance Requirements:</u>			
Article 5 lists standards for minimum lot size, lot width, front, side and rear setbacks, maximum building height and lot coverage, and development intensity.			
The applicant has applied for a Special Use Permit on property zoned Agricultural Residential (AR). The standards for the AR district are set forth in Article 5.1.2 and are as follows:			
a) Minimum lot area per use 40,000 sq. ft.	<u> x </u> Yes ___ No	The property is zoned Agricultural Residential (AR) requiring a minimum lot area of 40,000 square feet. There are approximately 10 acres in the tract.	<u> x </u> Yes ___ No
b) Minimum lot width - 150 ft.	<u> x </u> Yes ___ No	The lot has over 900 feet of frontage along the access easement providing ingress/egress to Old Greensboro Highway	<u> x </u> Yes ___ No
c) Required front setback - 40 ft.	<u> x </u> Yes ___ No	The proposed boarding facility is approximately 185 feet from the front property line. The existing house, as shown on the site plan, is 180 feet from the front property line	<u> x </u> Yes ___ No
d) Required side and rear setbacks - 20 ft.	<u> X </u> Yes ___ No	The proposed boarding facility is approximately 210 feet from the southern property line, 650 feet from the northern property line, and 210 feet from the rear property line.	<u> x </u> Yes ___ No
e) Maximum building height - 25 ft.	<u> x </u> Yes ___ No	The proposed facilities as shown within the submitted renderings are compliant with the maximum height requirements.	<u> x </u> Yes ___ No

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Motion made by Dawn Brezina proposed that the findings of fact presented by the counsel for Article 5a, b, c, d and e be found in the affirmative. Seconded David Blankfard.
Vote: Unanimous

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ARTICLE 6 - APPLICATION OF DIMENSIONAL REQUIREMENTS
("Yes" indicates compliance; "No" indicates non-compliance)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<u>Ordinance Requirements:</u>			
Article 6 lists specific standards that apply to various types of development applications.			
Article 6.12 contains those development intensity standards which apply to group developments controlled by the Land Use Intensity (LUI) system			
a) Minimum gross land area - N/A	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the minimum gross land area requirement	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the minimum gross land area requirement	<u> x </u> Not Applicable
b) Maximum gross land area - N/A	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the maximum gross land area requirement	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the maximum gross land area requirement	<u> x </u> Not Applicable
c) Maximum floor ratio - .088 or 38,322 sq feet of allowable floor area	<p><u> X </u> Yes <u> </u> No</p> <p>The site plan indicates that the proposed floor area of the for the boarding facility and existing single-family residence are approximately 6,515 square feet.</p> <p>Staff has determined that the proposal is consistent with the permitted Maximum Floor Area Ratio limits</p>	In utilizing the information supplied on the site plan, the Board finds that the applicant's proposal complies with the Maximum Floor Ratio limit of .088 per Section 5.1.2 and Section 6.12.2.3 of the Orange County Zoning Ordinance	<u> x </u> Yes <u> </u> No

d) Required minimum open space ratio - .84

Yes No

In utilizing the information supplied on the site plan, the Board finds that the applicant's proposal complies with the Required Minimum Open Space Ration requirement of .84 per Section 5.1.2 and Section 6.12.2.4 of the Orange County Zoning Ordinance Yes No

Required minimum open space – **365,904** sq. ft. (8 acres)

Staff has utilized the submitted site plan and calculated the existing open space on the property and verified that there is approximately **373,000 square feet** of open space on the property.

Staff has determined that the proposal is consistent with the required Open Space Ratio

e) Required minimum pedestrian/landscape ratio - .21
Required minimum pedestrian/landscape space – **91,476** sq. ft.

Yes No

In utilizing the information supplied on the site plan, the Board finds that the applicant's proposal complies with the Required Minimum Pedestrian/Landscape Ratio of .21 per Section 5.1.2 and Section 6.12.3 of the Orange County Zoning Ordinance Yes No

Staff has utilized the submitted site plan and calculated the existing landscaped area on the property and verified that there is approximately **130,500** square feet, of pedestrian/landscaped area as defined under Section 6.12.3 of the Orange County Zoning Ordinance

Staff has determined that the proposal is consistent with the required Minimum Pedestrian/Landscape space.

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Motion made by David Blankford to find with the findings of fact for Article 6 per counsel and staff that Articles 6.1, 2, a is not applicable, c is yes, d is yes, e is yes. Seconded Larry Wright.

Vote: Unanimous

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ARTICLE 8.2.4 - SPECIFIC STANDARDS/ALL SPECIAL USES
("Yes" indicates compliance; "No" indicates non-compliance) (continued)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
Article 8.2.4 requires the applicant to address the following:		Information contained within Attachment Three (3) of the abstract completed by staff indicate that the well and septic system will have to be approved by the State of North Carolina.	
a) Method and adequacy of provision for sewage disposal facilities, solid waste and water service.	___Yes ___No	With respect to solid waste disposal, the applicant has indicated that he will contract with a private firm for the removal and disposal of waste. According to staff this is acceptable with respect to the requirements of the Ordinance	___Yes ___No

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Tom Brown: On page 140 and 141 that goes to c. The motion for a, we need to stipulate that condition will be concurrently with approval.

David Blankfard: Could we say that we find in affirmative based on recommendations of condition number 4 provided by staff.

Motion made by David Blankfard to find in the affirmative Article 8.2.4, Section a, find in the affirmative based on condition 4 provided by staff on page 146. Seconded Dawn Brezina.

Vote: Unanimous

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b) Method and adequacy of police, fire and rescue squad protection.

Yes No

The White Cross Rural Fire Department will provide fire protection.

Yes No

Rescue services will be provided by Orange County EMS.

The Orange County Sheriff's Department shall provide police protection.

The Fire Marshal has indicated is a new e-mail, dated March 4, 2011, that recent site plan modifications have addressed his concerns and that he can serve the project as now proposed.

c) Method and adequacy of vehicle access to the site and traffic conditions around the site.

Yes No

The site plan indicates the lot is accessed through a driveway onto Old Greensboro Highway.

Yes No

NC DOT will need to review in order to determine if a driveway permit can be issued allowing for the existing driveway to be used to support the hoarse boarding and training facility.

They cannot issue final approval until there is an approved site plan. This should be a condition of approval.

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3 *Motion made by Dawn Brezina to proceed with the recommendations as outlined by staff for Articles 8.2.4b and c*
4 *to be found in the affirmative. Seconded James Carter.*

5 *Vote: Unanimous*

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ARTICLE 8.8.11 - SPECIFIC STANDARDS FOR A CLASS II KENNEL
("Yes" indicates compliance; "No" indicates non-compliance) (continued)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<p>In addition to the information required by Subsection 8.2 and 8.8, the following shall be submitted as part of the application in order to determine compliance with the site specific development requirements for a Class II Kennel as outlined within Section 8.8.11 of the Ordinance:</p>			
<p>Section 8.8.11.1</p> <p>a) Plans for all kennels, barns, exercise yards, riding arenas, pens and related improvements, including signage.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The submitted site plan shows the location for all buildings proposed for use as part of the operation.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Section 8.8.11.1</p> <p>b) Site plan showing the improvements listed in a) above, other structures on the same lot, and structures on adjacent property</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The submitted site plan provides all essential information as required under Section 8.8.11.1 (b)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Section 8.8.11.2</p> <p>a) The site is of adequate size to protect adjacent properties from adverse effects of the kennel or riding stable/academy</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The site appears to be of sufficient size to allow for the development of the proposed facility</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Section 8.8.11.2</p> <p>b) No part of any building, structure, runway or riding arena, in which animals are housed or exercised shall be closer than 150 feet from a property line, except property occupied by the owner/operator of the kennel. These minimum distances shall not apply if all portions of the facility, in which animals are housed, are wholly enclosed within a building</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The site plan denotes that any and all areas where animals are housed are within enclosed buildings.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

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Section 8.8.11.2

Yes No

The site plan denotes that the arena utilized for exercise and training activities fenced.

Yes No

c) Any kennel which is not wholly enclosed within a building shall be enclosed by a security fence at least 6 feet in height, which shall include primary enclosures or runs

Section 8.8.11.2

Yes No

The site plan denotes the proposed parking, access areas, and screening devices for buildings and animal training facilities

Yes No

d) The site plan shows parking, access areas and screening devices for buildings and animal boarding facilities

Section 8.8.11.2

Yes No

The site plan has been tentatively reviewed and deemed appropriate by Animal Control.

Yes No

d) The Site Plan shall be reviewed by the Orange County Animal Control Department, and found in conformance with Section XIX of the Animal Control Ordinance

The applicant will be required to apply for and obtain a permit from Orange County Animal Health in addition to the Special Use Permit.

A condition of approval is that the applicant be required to obtain this permit within one hundred eighty (180) days from the issuance of the SUP

Section 8.8.11.3

Yes No

The renderings and floor plan have been reviewed by Animal Control.

Yes No

a) Building plans for all kennel facilities shall be reviewed and approved by the Director of Animal Control prior to issuance of any building permits

The applicant cannot make an application for final approval until the SUP is issued.

A condition of approval is that the applicant be required to obtain a building permit within one hundred eighty (180) days from the issuance of the SUP and that the building plans have to be approved by the Director of Animal Control

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Section 8.8.11.3

Yes No

The applicant has indicated on the site plan that there will be a sign on the property adhering to this condition

Yes No

b) A sign clearly visible from the ground shall be posted at the main entrance to the facility and shall contain the names, addresses, and telephone numbers where persons responsible for the facility may be contacted at any hour of the day or night. The sign shall comply with dimensional requirements as set forth in Section 9.11 of this Ordinance

A recommended condition of approval is that the applicant be required to submit a sign rendering for review and approval by the Planning Department within one hundred eighty (180) days from the issuance of the SUP and that the approved sign shall be installed prior to the issuance of a Certificate of Occupancy allowing for kennel operations to commence.

Section 8.8.11.3

Yes No

The applicant has indicated that the plan will be reviewed and approved by the Orange County Department of Animal Control.

Yes No

c) Where required by the Animal Control Ordinance a Class II Kennel Permit shall be obtained from the Department of Animal Control within the first 30 days of occupancy. Failure to obtain and maintain a valid Class II Kennel Permit or other related permits which may be required by the USDA or Wildlife Resources Commission will result in revocation of the Special Use Permit.

This should be a condition of approval

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Motion made by Dawn Brezina that in accordance with the recommendations of staff that we find Articles 8.8a and b in addition to Section 8.8.11.2a, b, c and d, and e as well as Section 8.8.11 3a, b and c all in the affirmative as per the recommendations of staff. Seconded Larry Wright.

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Vote: Unanimous

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ARTICLE 8.2.1 & 8.2.2 - APPLICATION COMPONENTS
(“Will” indicates compliance; “Will Not” indicates non-compliance)

FINDINGS <u>Ordinance Requirements</u>	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<p>In accordance with Article 8.2.1 and 8.2.2 of the Zoning Ordinance, the Board of Adjustment shall also consider the following general conditions before the application for a Special Use can be approved:</p> <p><u>Article 8.2.1 & 8.2.2</u> 1. The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.</p>		<p>To be determined by Board after receiving evidence to be submitted or heard at public hearing.</p>	<p>___Will ___Will Not</p>

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7 *Motion made by Dawn Brezina proposed that Article 8.2.1 and 8.2.2 that testimony that has been provided*

8 *supports the Article that it will maintain and promote public health, safety and general welfare if located where*

9 *proposed and operated according to the plan submitted per the testimony of the acoustical expert and the site plans*

10 *engineer and our own staff. Seconded David Blankfard.*

11 *Vote: Unanimous*

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Article 8.2.1

2. The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property).

To be determined by Board after receiving evidence to be submitted or heard at public hearing.

___Will ___Will Not

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4 **Motion** made by David Blankfard to add another condition to this permit that an updated reported from Mr. Knight is added ...

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7 Tom Brown: We will discuss that under conditions. I don't see a problem with that but we will need to discuss that with the conditions portions because what you are looking at here, will the use maintain or enhance the value of contiguous property. You are using Mr. Knight's report as the basis but then you would, under conditions have an updated report.

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12 David Blankfard: I could state that as a condition of acceptance?

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14 Sahana Ayer: We are not acting on it?

15

16 David Blankfard: It would be nice to have all the paperwork in line.

17

18 Larry Wright: Didn't he say that it probably would not impact it.

19

20 David Blankfard: It is not because this report is based on finishes and features of the kennel. They have added acoustical work to it so it would enhance his report.

22

23 Tom Brown: When we are in the general articles, would it be appropriate to actually mention a condition there or delay that until you get to the condition on the back?

25

26 Sahana Ayer: If you are adding information, that should go to the back but if you are thinking of making a decision now or deferring your decision, you have to make your decision on what was presented. You can add a condition later that could reference the acoustical experts. That is okay but as far as the value of the property; you have to base your decision on what was presented.

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31 Tom Brown: We will or will not, based on here today, put a condition on the back that would require an updated report but that would not have an impact on that particular article. Based on the testimony on what we have heard here you have to make a call.

34

35 ***Motion** made by David Blankfard proposed that for Article 8.2.1 (2) that based on the report by Mr. Knight dated September 3, 2010 that gives the general materials and configuration of the kennel, that it will maintain or enhance the value of contagious properties. Seconded Larry Wright.*

38 ***Vote: Unanimous***

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Article 8.2.1

3. The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the general plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.

To be determined by Board after receiving evidence to be submitted or heard at public hearing.

___Is ___ Is Not

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3 *Motion made by Larry Wright that based on staff's testimony, Mr. Harvey's testimony I believe that Article 8.2.1*
4 *Item 3, the location and character and use does conform to the 2030 Comprehensive Plan as adopted by the*
5 *Commissioners. Seconded Dawn Brezina.*

6 *Vote: Unanimous*

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RECOMMENDATION:

The Planning Staff has not received any information that would establish grounds for making a negative finding on the general standards. These standards include maintaining or promoting the public health, safety, and general welfare, maintaining or enhancing the value of contiguous property, and the use being in compliance with the general plan for the physical development of the County.

The Planning Staff has reviewed the application, the revised site plan, and all supporting documentation and has found that the applicant does comply with the specific standards and required regulations. The previous issue related to the access of the property by emergency vehicles has, apparently, been addressed to the Fire Marshal's satisfaction as he now had submitted a revised recommendation approving the project.

In the event that the Board of Adjustment makes the determination that the permit can be issued, Planning Staff recommends the attachment of the following conditions:

- (1) That the applicant complete and submit a formal application to the Orange County Inspections Department requesting authorization to commence construction of the proposed kennel facility. The application, including all applicable fees, shall be submitted within one hundred eighty (180) days from the approval of the Special Use Permit. Further, the building permit application shall be reviewed and approved by the Director of Animal Control for compliance with any and all applicable animal control regulations in accordance with the provisions of Section 8.8.11.3 of the Zoning Ordinance,
- (2) That the Orange County Fire Marshal's office shall review and approve the building plans, as part of the normal building permit review process, and that any and all modifications to the structure be made to address fire code issues prior to the issuance of the permit authorizing the commencement of construction activities,
- (3) That the Orange County Fire Marshal's office inspect the roadway modifications to certify that they are consistent with the approved site plan and that emergency vehicle access will be possible prior to the issuance of a Certificate of Occupancy authorizing the commencement of boarding activities.
- (4) That the applicant complete and submit a formal application to the North Carolina Department of Environment and Natural Resources (DENR) to allow for the development of the proposed septic system within one hundred eighty (180) days from the approval of the Special Use Permit. Further, a copy of said permit shall be supplied to Orange County Planning and Environmental Health staff and that an approved permit be furnished to both Department's upon its issuance,
- (5) That the applicant shall supply the Planning Department and Orange County Environmental Health with the permit approval from the State indicating the type of system approved for the site. Further, the applicant shall supply the Planning Department and Environmental Health staff with inspection reports from the State indicating the system has been inspected and that it can be used to support the proposed kennel prior to the commencement of operations,
- (6) That the applicant complete, submit, and receive approval for a Class II Kennel application from the Orange County Animal Control Department within one hundred eighty (180) days from the issuance of the SUP,
- (7) That the applicant be required to submit a sign rendering for review and approval by the Planning Department within one hundred eighty (180) days from the issuance of the SUP and that the approved sign shall be installed prior to the issuance of a Certificate of Occupancy allowing for kennel operations to commence.
- (8) That the applicant submit the approved site plan to NC DOT for review and comment. In the event it is determined that the applicant is required to apply for, and receive a, driveway permit from NC DOT to allow for the project to be developed, the applicant shall submit all necessary applications as required by NC DOT within one hundred eighty (180) days from the issuance of the SUP and provide planning staff with a copy of the issued permit,

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2 Tom Brown: The general findings are approved by the board. We are going to page 146, the Recommended
3 Conditions on issuing this Special Use Permit. As you go down through one, two three four, if you have any issues,
4 we will try to capture all the additional conditions but on number 4 at the end of that condition, we need to add,
5 furnish to both Departments upon its issuance, and that an approved permit is required before earth disturbing
6 activities commence. We have condition five, six, seven, eight and then nine. The numbers may not be in order
7 but if I miss something, we will make sure we get item in order. Number 9, the Landscape plan should mirror the
8 site plan, general note number 8 and number 9. Is that wording good enough?
9

10 Larry Wright: In Condition number 9, I would like to state that the landscaping is installed consistent with numbers 8
11 and 9 on the applicant's site plan. I believe this would conform more closely to the Comprehensive Plan and this be
12 a part of the site plan building and permit and landscape permit process.
13

14 *Motion made by Larry Wright for condition 9 that it conforms to items 8 and 9 on the applicant's general plan as*
15 *submitted to this board and would be consistent with items 8 and 9 of the site plan and be part of the building plan*
16 *and permitting process. Seconded Larry Wright.*

17 *Vote: Unanimous*
18

19 Sahana Ayer: Zoning Compliance Approval Process.
20

21 Tom Brown: Number 10.
22

23 David Blankfard: They have 60 days to file that.
24

25 Tom Brown: To be documented with staff within 60 days.
26

27 Larry Wright: 60 days from today.
28

29 Tom Brown: Number 11. Number 12. Number 13. Number 14. I think we had a couple of recommendations for
30 hours of operations. Unless you have feelings one way or another, we can propose the hours of the operation of
31 the kennel from 7:00 AM to 7:00 PM and that dogs are only allowed in the runs during the hours of operation.
32

33 Larry Wright: Operation of kennel is 24 hours.
34

35 Tom Brown: Right. But they can't be outside in the run.
36

37 Larry Wright: It isn't really the hours of operation but hours of business.
38

39 Tom Brown: Business hours.
40

41 Sahana Ayer: You could be more specific and say hours of pick up and drop off.
42

43 David Blankfard: Animals can only picked up or dropped off between the hours of 7:00 AM to 7:00 PM.
44

45 James Carter: 7:00 AM to 7:00 PM.
46

47 Tom Brown: Business hours when people come in and out is a separate issue to when the dogs can actually be
48 outside.
49

50 David Blankfard: Dog drop-off is from 7 AM to 7 PM and is only allowed in the runs during business hours.
51

1 James Carter: Between business hours should be clear.
2
3 Tom Brown: Kennel business hours are restricted to 7:00 AM to 7:00 PM. Should the dogs being outside be in
4 addition?
5
6 David Blankfard: Business hours to me are people coming in and out.
7
8 Larry Wright: You could say business hours or customer service hours.
9
10 Tom Brown: That still doesn't address the animals outside.
11
12 Sahana Ayer: Pick up and drop off are all animals and dog runs are only dogs.
13
14 Tom Brown: Pick up and drop off hours are between 7:00 AM and 7:00 PM. Dog run hours are during the same
15 timeframe.
16
17 *Motion made by Larry Wright to approve the conditions as modified by the board. Seconded James Carter.*
18 *Vote: Unanimous*
19
20 Tom Brown: The deliberations are completed and case A-6-10 Class II Kennel Canine Boarding Faculty has been
21 approved by the Orange County Board of Adjustment.
22

23
24 **6. ADJOURNMENT**

25
26 *Motion made Larry Wright to adjourn. Seconded James Carter.*
27 *Vote: Unanimous*
28
29 Meeting adjourned at approximately 11:30 p.m.
30

31
32
33 Tina Owen, Minutes Preparer